United States Court of Appeals

for the Second Circuit

EXHIBITS

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

CLEARVIEW CONCRETE PIPE CORP., Et al

-against-

NATIONAL LABOR RELATIONS BOARD

UNITED STATES COURT OF APPEALS
FILED
APR 14 1975
A. DANIEL FUSARO, CLERK
SECOND CIRCUIT

EXHIBIT VOLUME 5

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OFFICIAL REPORT OF PROCEEDINGS

BEFORE THE

National Labor Relations Board

DOCKET NO. 29-CA-3560

IN THE MATTER OF:

CLEARVIEW PIPE CORPORATION

PLACE: Brooklyn, New York

DATE: February 19, 1974

PAGES: 1 - 165

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BEFORE THE NATIONAL LABOR RELATIONS BOARD

29th Region

In the Matter of:	
CLEARVIEW PIPE CORP., d/b/a CLEARVIEW CONCRETE PRODUCTS CORP. and GRAND PRE-STRESSED CORP.	Case No. 29-CA-3560
-and-	
EARL NARE, an Individual	

16 Court Street
Brooklyn, New York
Tuesday, February 19, 1974

The above-entitled matter came on for hearing, pursuant to notice, at 11:00 o'clock a. m.

BEFORE:

BENJAMIN B. LIPTON, Administrative Law Judge

APPEARANCES:

MARTHA R. KAVE, Esq.	Brooklyn, New York, appearing on behalf of the Counsel for the General Counsel.
FRANCIS P. DONELAN, Esq.	Hynes & Diamond, 25 Broadway, New York, New York, appearing on behalf of the Respondent.

I N D E X

WITNESS:	DIRECT	CROSS	REDIRECT
Earl Nare	25	44	57
George Bartoli	60	72	78
Louis Leonardi	81	97	105
Peter Leonardi	106	120	123
John Winfield	125	136	139
Salvatore DiSomma	143	155	160

EXHIBITS:	FOR IDENTIFICATION	IN EVIDENCE
General Counsel's:		
1		4

P R O C E E D I N G S

JUDGE LIPTON: The hearing will be in order.

This is a formal hearing before the National Labor Relations Board in the matter of Clearview Pipe Corp., doing business as Clearview Concrete Products Corp. and Pre-Stressed Corp., Case No. 29-CA-3560.

I am Benjamin B. Lipton, the administrative law judge who will preside at this trial.

All parties have been informed of the procedures at formal hearing before the board by service of a statement of standard procedures with the complaint and notice of hearing.

Additional copies of the statement are available from counsel for the general counsel upon request.

Now, will counsel please state their appearances for the record?

For the general counsel?

MS. KAVE: Martha R. Kave, Region 29, Counsel for the General Counsel.

JUDGE LIPTON: Mr. Donelan?

MR. DONELAN: Francis P. Donelan forthe respondents, Clearview and Grand.

JUDGE LIPTON: That will be all at the moment.

Off the record.

(Discussion off the record.)

JUDGE LIPTON: On the record.

All right, Ms. Kave, you may proceed with the formal papers, if you will.

MR. DONELAN: Your Honor, before we start might I make an application to the Court, please?

JUDGE LIPTON: We do want to get the formal papers in. This is just the initial stage. You already indicated that you have an application and I will hear you when we are ready.

MS. KAVE: Your Honor, I offer into evidence the formal papers marked General Counsel's Exhibit No. 1 which includes 1AA through 100.

This exhibit is currently being shown to respondents' counsel.

MR. DONELAN: No objection.

JUDGE LIPTON: The formal papers, General Counsel's Exhibit 1AA through 100 is admitted, there being no objection.

(General Counsel's Exhibit 1 for identification received in evidence, as of this date)

JUDGE LIPTON: Is there anything further with respect to the formal papers, any amendments?

MS. KAVE: Your Honor, at our formal pretrial conference respondents' counsel indicated that he was willing to stipulate to certain paragraphs in the complaint

that he had initially denied.

I have prepared certain stipulations for today.

JUDGE LIPTON: Have you consulted with opposing counsel on these stipulations?

MS. KAVE: Only at the conference. I haven't shown him what we have.

JUDGE LIPTON: All right. To facilitate this, Mr. Donelan, do you have any motions to amend your answer with respect to any of these allegations in the complaint?

MR. DONELAN: Yes, your Honor.

As a result of the prehearing conference which was held last Monday, respondents are willing to admit the allegations or change Paragraph Fifth of their answer to admit the allegations of Paragraph Fifth of the complaint as well as amending their answer in Paragraphs Sixth and Seventh.

JUDGE LIPTON: Respondents admit Paragraphs Fifth, Sixth and Seventh?

MR. DONELAN: Correct, your Honor.

JUDGE LIPTON: Miss Kave -- is it Miss?

MS. KAVE: Ms.

JUDGE LIPTON: Do you still have these proposed stipulations? Does that change anything?

MS. KAVE: No, it does not.

I have a question. Respondents' counsel indicated

at the prehearing conference that he would have to consult with his client about stipulating to Paragraph Four of the complaint and he did not mention it now.

JUDGE LIPTON: Does this Paragraph 4 relate to the stipulations you have brought up, Ms. Kave?

MS. KAVE: Yes.

JUDGE LIPTON: Do you have any change in language as to Paragraph 4 on the part of the general counsel?

MS. KAVE: Well, I was under the impression that it was a good possibility that respondents' counsel was going to stipulate to the entire content of Paragraph 4 which relates to commerce which 5 and 6 follow from.

MR. DONELAN: Your Honor, the allegations of Paragraph 4, if we are talking generalities, yes, we have two corporations which are basically owned by the same people but there are some specific differences in officers and directors in the corporations.

They are not identical.

JUDGE LIPTON: In what respects would you change the language? What portion of Paragraph 4 do you consider to be inaccurate?

MR. DONELAN: If you just give me a minute, your Honor.

JUDGE LIPTON: We will be off the record.

(Discussion off the record)

JUDGE LIPTON: On the record.

Respondents propose to stipulate as to Paragraph 4.

Mr. Donelan, as you have indicated off the record, if you will now proceed to recite the language to which you had agreed?

MR. DONELAN: Yes, your Honor. Respondents are and at all times from material herein have been affiliated businesses and in general operate with common officers, ownership, directors and operators and constitute a single integrated business enterprise.

Directors and operators form rates and administer common labor policy for the aforesaid companies affecting the employees of said companies.

JUDGE LIPTON: All right.

Ms. Kave, do you agree to that?

MS. KAVE: Iagree to that.

JUDGE LIPTON: That will be admitted as a stipulation and will be reflected in Respondents' answer to Paragraph 4.

Is there anything further relating to the pleadings?

MS. KAVE: Respondents' counsel also indicated at the pretrial hearing that he would check into the supervisory status of Thomas Monahan.

Now, Mr. Monahan is mentioned in Paragraph 9 of the complaint where he is referred to as laborers' foreman and supervisor and that entire paragraph was denied by

respondents in their answer.

I was wondering if --

JUDGE LIPTON: Do we have an issue as to Mr. Monahan, as to his supervisory status?

MR. DONELAN: Mr. Monahan is a foreman.

JUDGE LIPTON: All right, the respondent is not alleging that the foreman, Thomas Monahan is not a supervisor within the meaning of the Act? Are we going to have to litigate the supervisory status of Mr. Monahan?

MR. DONELAN: Just a minute, your Honor, please.

No, I have no objection, your Honor.

He can be considered a supervisor.

JUDGE LIPTON: All right, the record so reflects. Does that take care of it, Ms. Kave?

MS. KAVE: Yes, your Honor.

JUDGE LIPTON: This is all relating to the pleadings?

Do you have anything more, Ms. Kave?

MS. KAVE: No, your Honor.

JUDGE LIPTON: All right, at this point, Mr. Donelan, if you are ready I will hear from you. You indicated you have a motion.

MR. DONELAN: Yes, your Honor.

On last Thursday which was the 11th of February I learned for the first time that my principal witness,

Mr. Frances who is the party alleged to have been the principal supervisor of respondents and the party who was apparently engaged in the acts and complained of in the complaint, I learned for the first time that Mr. Monahan would not be available for trial today.

JUDGE LIPTON: Let me interrupt you for a moment. You did say Mr. France?

MR. DONELAN: Excuse me, forgive me, I am mixing up the two names. Mr. David Frances.

JUDGE LIPTON: You are referring now to Mr. David Frances?

MR. DONELAN: Correct, your Honor, I'm sorry.

I learned for the first time that Mr. Frances would not be available and I immediately called my office and dictated a letter to Mr. Kaynard, the regional director, on the afternoon of the 14th and asked that it be immediately handled, advising Mr. Kaynard of Mr. Francis' unavailability and requesting an eight day adjournment of the matter until Mr. Frances returned from the west coard.

That letter was hand delivered on the afternoon of the 14th at my request.

On the morning of the 15th I called Mr. Kaynard at approximately 10:05 to ask if he had received the letter and whether or not any action would be taken on my

request.

Mr. Kaynard indicated to me at that time that he thought my request could have been treated favorably and suggested I call him by two that afternoon.

At approximately 2:05 I received a call from Mr. Schwartz of the National Labor Relations Board advising that the adjournment was not possible.

I indicated to Mr. Schwartz or I reiterated the unavailability of Mr. Frances for the trial and I again requested the adjournment.

He indicated to me that they could not obtain the adjournment and suggested that I attend here this morning and reapply if I felt it advisable before this Court which I am doing at the present time.

Mr. Frances is the gentleman complained of in the complaint and my principal witness in defense of this proceeding and I think it imperative that Mr. Frances be available for the testimony to be given by those making charges in this hearing as well as, of course, being available to give testimony on behalf of respondents in defense of these particular proceedings.

I am requesting an adjournment of this hearing for the 28th of February.

JUDGE LITTON: Let me look over the pleadings for a moment and the original complaint.

MR. DONELAN: Your Honor --

JUDGE LIPTON: Don't interrupt, please.

MR. DONELAN: Forgive me.

JUDGE LIPTON: The original complaint was issued November 30th and Mr. Frances I would assume was aware of the complaint and there was a postponement.

I don't know at whose request. Was it at your request?

MR. DONELAN: That was at the request of the respondents, your Honor.

JUDGE LIPTON: At your request there was a postponement?

MR. DONELAN: Correct, your Honor.

JUDGE LIPTON: To this date, and also within the knowledge of the company and Mr. Frances is an officer of the company?

MR. DONELAN: No, he is not, your Honor.

JUDGE LIPTON: He is the plant superintendent?

MR. DONELAN: Correct.

JUDGE LIPTON: You say Mr. Frances is on the west coast? That is the reason for the request to postpone, his unavailability because he is on the west coast?

MR. DONELAN: Perhaps if I could explain, your Honor, perhaps further explanation is necessary.

After I attended the pretrial hearing, last Monday afternoon I called Mr. Russo, an officer of Clearview

and present here today and requested we meet to review this matter prior to today's hearing.

When I met with Mr. Russo which was on I believe the 15th it became apparent at that time that although notice had been sent to me as well as to the respondents, the notice of the new hearing date had not been communicated to Mr. Frances.

The respondents herein, your Honor and the reason for Mr. Frances' trip to the west coast is based upon a job which the respondents have just received in connection with construction at the Nassau Community College requiring a job which is going to start immediately, and the necessity for the purchase of new and substantial equipment for the performance of that project.

Mr. Frances was dispatched to the west coast, without knowledge of this new hearing date and admittedly, your Honor, the communication gap was internal, within the respondents in not communicating it to their own plant supervisor who was to be the principal witness.

But I still feel under the circumstances, your Honor, that the short adjournment request would not be prejudicial to anyone here and that I think it would only be prejudicial to respondents to proceed without Mr. Frances' availability.

JUDGE LIPTON: Well, it is prejudicial to me right

now. Preparation has been made by the government, witnesses have made plans. I assume you did not mention this at the pretrial.

What was the date of the pretrial?

MR. DONELAN: Last Monday, your Honor, which would have been the 11th, I believe.

JUDGE LIPTON: You didn't make that at the pretrial.

MR. DONELAN: I didn't have knowledge.

JUDGE LIPTON: Somebody was remiss within the company, having a copy of the complaint and knowing Mr. Frances was specifically named.

Whoever was remiss it was internal, as you say. There has already been a postponement in this case and while the company's business is important, of course, this proceeding is important as well.

It is a very serious matter. Do you have anything to state, Ms. Kave, in connection with this request for a postponement?

MS. KAVE: I feel the request for postponement should not be granted based on the reasons that you state, that there was a postponement already at respondents' behest.

We only had one workday's notice since last Friday for a request for this postponement. We have six men here who have been out of work since the end of July, the beginning of August, and have come in from Babylon,

Long Island which is a substantial distance from here to be present today.

I would oppose the postponement. I am ready to proceed at this point.

JUDGE LIPTON: I am inclined to deny the request for postponement.

I so rule, it is denied.

MR. DONELAN: Your Honor, may I have until tomorrow to seek an order from the District Court, your Honor, in connection with this matter?

I feel it imperative that I must have Mr. Frances available before I can proceed in this matter. I respectfully request that one day's adjournment to seek an order to show cause from the District Court.

JUDGE LIPTON: On what ground? On what ground do you seek such an order?

MR. DONELAN: On what ground do I seek it? On the same reasons that I stated to your Honor this morning.

JUDGE LIPTON: What is the position of the general counsel on this one day's postponement?

MS. KAVE: We object to the one day postponement.

JUDGE LIPTON: You are a member of a law firm?

MR. DONELAN: Yes, sir, I am, your Honor.

JUDGE LIPTON: This is an ancillary matter. Couldn't you have somebody from the law firm prepare those papers?

MR. DONELAN: Your Honor, at the present time there are four of us presently engaged in the firm. Mr. Hynes, my partner, is on trial in Newport, Rhode Island in the United States District Court.

My other partner, Mr. Reedy is engaged in an arbitration proceeding here in New York and the other gentleman that works for us is with Mr. Hynes as trial assistant in the Newport, Rhode Island matter, leaving me alone here in New York.

JUDGE LIPTON: There are busy law firms but this is a serious business and I think we have the same prejudicial factors involved.

If you want to proceed to apply to the Federal District Court I think you will have to find the time without the postponement.

That is denied.

We will have a short recess of about five minutes before we go into brief opening statements and then the taking of evidence.

(Short recess taken)

JUDGE LIPTON: We will be on the record.

Ms. Kave, would you make a brief opening statement on what the real issues are in this case, without repeating the formal language already apparent in the complaint.

MS. KAVE: It is the general counsd's intent to show that since July 20th, 1973 when the company received a letter from District 15 of the International Association of Machinists and Aerospace Workers, AFL-CIO stating they represented a majority of the mechanics at the company and asking for recognition the company, by its supervisors, David Frances and Thomas Monahan commenced interrogating the six mechanics at the company in order to discover who had contacted the union initially and systematically began discharging them.

The first two were at the end of July and then the following week, the first week in August the second two and then the third two a week later.

JUDGE LIPTON: How many do you have?

MS. KAVE: We have six discriminatees.

JUDGE LIPTON: All right.

MS. KAVE: And that these six men were discharged as a result of the receipt of this letter from District 15.

JUDGE LIPTON: Is that your statement?

MS. KAVE: Yes, fairly concise.

JUDGE LIPTON: Mr. Donelan?

MR. DONELAN: Yes, your Honor.

JUDGE LIPTON: You wish to make any opening comments?

You have, of course, your affirmative defense stated with your answer.

MR. DONELAN: Yes, your Honor, just in brief.

The respondents intend to show that the receipt of any letter from District 15 or any other labor organization has nothing to do with the discharge of any of the employees who are making claim here.

The company and I should say the particular work these gentlemen were performing in December 1973 came to a conclusion in the latter part of July and due to a lack of work two of the gentlemen were let go.

It was after the first two gentlemen were let go that apparently the other four claimants felt and we feel improperly that the discharge of the first two was based on some alleged union activity.

The remaining four claimants then proceeded to what my clients characterize as a laydown on the job.

This resulted in the discharge of two of the other employees with further warning to the two remaining.

The two remaining employees continued what my clients characterize as laydown and this resulted in the discharge of the last two employees.

Briefly stated that is the position of the respondents.

JUDGE LIPTON: I take it then that these three employees named in the complaint constituted the entire complement of employees of the company at that time?

MR. DONELAN: No, your Honor. This is a very large complex with many, many other employees.

JUDGE LIPTON: Many other employees doing the same type of work?

MR. DONELAN: There are others doing similar type of work, your Honor, that is correct. I don't know if it is precisely identical. Only our witnesses, when we ultimately put our witnesses on the stand, would be able to testify.

JUDGE LIPTON: Ms. Kave, of course this is just opening remarks to narrow the issues and to guide me in making rulings.

What is the status of the union's recognition claim if there is any information that is relevant here?

MS. KAVE: Well, initially a charge was filed on behalf of the six men by District 15. They subsequently withdrew their charge and one of the six men, Mr. Nare, filed the charge on behalf of the other five men.

There are three other labor organizations in the company now representing different employees.

There is a teamsters local representing the truck drivers. There is a local of the laborers representing the production workers and laborers of the company and there is also a local of the Operating Engineers which represents two or three engineers at the company.

JUDGE LIPTON: You say they are representing these employees under contract?

MS. KAVE: Yes.

There were, from what I understand, some kind of internal juridsictional dispute which arose as a result of District 15's letter asking for the recognition.

I think it was with the Operating Engineers, AFL-CIO, affiliated with the AFL-CIO and that resulted in District 15 withdrawing the charge and I don't know whether the company ever received any formal notice from District 15 withdrawing their demand for recognition. That I do not know.

But that is the background on the union.

JUDGE LIPTON: There are no other proceedings before the board at the present time?

MS. KAVE: No, there are not.

JUDGE LIPTON: All right, Ms. Kave.

Do you have an estimate as to how long it will take you to put in your case in sheaf?

MS. KAVE: About a day and a half, depending on the length of the cross-examination.

JUDGE LIPTON: This includes the cross-examination according to your estimate?

MS. KAVE: I think so.

JUDGE LIPTON: How long do you think the entire case

will take, just for guidance purposes?

MS. KAVE: I figured about three days.

JUDGE LIPTON: Do you have any opinion on this, Mr. Donelan?

MR. DONELAN: Well, I would gather the same, your Honor. If I had my witness available and I am still faced with that same problem of not having him here to testify, your Honor.

JUDGE LIPTON: We are talking about a different subject.

MR. DONELAN: I would estimate the same estimate, your Honor.

JUDGE LIPTON: About how many witnesses do you expect to call? You are not committed, Ms. Kave.

MS. KAVE: Six.

JUDGE LIPTON: Are you ready to proceed now with the evidence?

MS. KAVE: Yes. I have just one inquiry.

I subpoenaed the letter sent by District 15 to the company.

Your Honor, I was wondering if it would be possible to get a stipulation that the company received this, a copy of this letter from District 15 on or about July 20th, 1973.

MR. DONELAN: On or about what date?

MS. KAVE: July 20th.

MR. DONELAN: It is not true.

JUDGE LIPTON: Well, I don't know what the letter is. Don't show it to me.

This is the letter you referred to in your opening statement?

MS. KAVE: Yes, and letter from District 15 requesting recognition from the company to represent the maintenance employees, maintenance and service employees of the company.

JUDGE LIPTON: All right. Your request for stipulation was turned down as of that date. Perhaps you could have some other date.

Does the company deny receipt of this letter?

MR. DONELAN: No, your Honor, but it didn't receive it on the date that general counsel hasindicated.

JUDGE LIPTON: Well, if it is just a matter of precise date, perhaps it could be clarified.

MR. DONELAN: I don't have a precise date, your Honor, only one of my witnesses who is not here today will be able to give us a precise date, Mr. DeLillo.

JUDGE LIPTON: The witness who is not here today, you mean Mr. Frances?

MR. DONELAN: No, your Honor.

I have four witnesses altogether. Only one is present

here today, anticipating, your Honor, that the adjournment was going to be granted, at least for the one day if not longer.

JUDGE LIPTON: This will come out in due course through witnesses.

Do you have the letter, the envelope?

MR. DONELAN: No, I don't have the envelope.

MS. KAVE: Do you have the registered receipt?

MR. DONELAN: I wouldn't have it. The sender would have it.

JUDGE LIPTON: It was sent registered?

MS. KAVE: Yes.

JUDGE LIPTON: Ms. Kave, you will be prepared to call your first witness at this point?

MS. KAVE: Yes, your Honor.

JUDGE LIPTON: All right, we will go off the record for a moment.

(Discussion off the record)

JUDGE LIPTON: We will be on the record.

MS. KAVE: Off the record?

JUDGE LIPTON: Off the record.

(Discussion off the record)

JUDGE LIPTON: On the record.

I did indicate off the record that without giving it deep thought myself that I would entertain anything that

came to me by way of an agreement between the parties as to the disposition of this matter of the missing witness.

But it does seem very apparent to me you have made decisions and judgments which you are entitled to do on contingencies of being denied your request for an adjournment.

You could have alerted your man in California. You still can bring him in even today. He can fly in. He can fly in tomorrow. We have estimates here of three days.

His unavailability because of business reasons in view of the whole background, that has already been covered.

I am not sympathetic to that reason whatsoever. You will have to make your decisions. You are the attorney and you take the risks involved.

I did want to indicate on the record though if you have something by way of an agreement with the general counsel I will not give you an anticipated ruling but I will entertain anything in the form of an agreement.

Now, are you ready to proceed?

MS. KAVE: Yes, your Honor.

JUDGE LIPTON: This first witness, is he going to be a lengthy witness, one of your principal witnesses?

MS. KAVE: Yes, your Honor.

JUDGE LIPTON: Can you call a witness out of turn? It is 12 o'clock now. Since we did start at 11 o'clock I would plan to adjourn for lunch sometime between 12:30 and 1 o'clock.

MS. KAVE: Could we or would it be possible for us to adjourn now and open up at 1 o'clock so I can present my case with continuity?

JUDGE LIPTON: All right, we will stand adjourned until 1 o'clock for lunch.

(Whereupon and at 12 o'clock noon a luncheon session was taken until 1 o'clock p.m.)

AFTERNOON SESSION

(1:00 o'clock p.m.)

JUDGE LIPTON: We will be on the record.

All right, Ms. Kave.

MS. KAVE: Your Honor, I am calling to the stand Mr. Earl Nare.

Whereupon,

EARL NARE

was called as a witness and, having been first duly sworn by Judge Lipton, was examined and testified as follows:

DIRECT EXAMINATION

Q (By Ms. Kave) Sir, would you please spell your name for the reporter and tell the reporter your address.

A Earl Nare, N-a-r-e, 36 Magro Drive, North Babylon, New York.

Q Mr. Nare, how long were you employed by Clearview Concrete?

A About six and a half years.

Q What type of work were you doing for Clearview?

A Mechanical, maintenance.

Q Were you maintaining machines?

A Yes.

Q What type of machines did you work on?

A Fork lifts, trucks.

Q Speak very clearly for the record.

A Payloaders, and sometime general plant maintenance, pipe machine.

Q What were you earning at the time you were discharged from Clearview?

A 5.20 an hour.

Q Do you remember what you received when you started working there?

A About 3.60, I think.

Q Did you receive increases regularly?

A Periodically.

JUDGE LIPTON: Mr. Nare, you will have to speak up. The acoustics in here are not too good.

THE WITNESS: Yes.

Q How many other men were doing the same type of work, mechanical work that you were doing at the time you were discharged from the company?

A Six, maybe eight at the tire I was discharged.

Q Can you name the men other than yourself?

A Yes, George Bartoli, Louis Leonardi, Pete Leonardi, George, John Winfield and Sal DiSorma, and there was one man they brought was a maintenance welder, production welder they put in maintenance while we were so busy.

Q What was his name? Do you know his name?

A I can't think of it immediately.

Q How long was that man whose name you can't recall,

how long had he been working for the company?

A There was one other welder they just hired.

Q First answer my question. Do you know how long the man whose name you can't remember had been working for the company?

A About a month I think before the layoff.

Q Then you mentioned someone else.

Was there another man that was doing maintenance work?

A Yes, one welder they just hired.

Q Before you were discharged?

A Yes.

Q When were you discharged from the company?

A I was discharged the 8th of August.

Q How many employees would you say there are approximately employed by the company?

A Oh, it varies. Sometimes from 60 to a hundred.

Q Can you give us some general description of what type of work they do at Clearview Concrete, what type of company it is?

A Concrete products. They make concrete pipe, precast, beams and sewer manholes.

Q Did they manufacture the pipe on the premises?

A Yes.

Q Then they ship it out?

A Yes.

Q When you were hired six and a half years ago who hired you for the job?

A Dave Frances.

Q Who was your supervisor at the time you were discharged?

A Dave Frances.

Q When Mr. Frances hired you for the job six and a half years ago did he mention any labor organization representing the employees of the company?

A No, he said the maintenance department was not -- did not have representation in any union.

Q While you were working there did you subsequently find out that there were unions representing some of the employees of the company?

A Yes.

Q Do you know what unions those were?

A Those are? There is a labor union 1298 and 282 truck drivers, Teamsters Union and 138 Operating Engineers.

Q Had you ever attempted to join any of these labor organizations?

A No.

Q When did the maintenance men begin discussing getting a labor organization of their own?

MR. DONOVAN: Objection to the question, leading.

JUDGE LIPTON: I will sustain it.

You are assuming a fact that they did.

MS. KAVE: I will rephrase it.

Q Did the maintenance men ever discuss getting a labor organization of their own?

A Yes, in the beginning of the summer we started.

Q Can you state more precisely what date it was other than the beginning of the summer?

A When they started talking about it?

Q Yes, when the men started talking about it.

A Oh, this might have been going on way back into the spring.

JUDGE LIPTON: Would you give a date, approximate date?

THE WITNESS: Oh, I'd say maybe April or May.

Q Which men did you speak to about getting a labor organization in to represent you?

A Mechanics.

Q Did you decide anything?

A In about the end of June we decided we would start looking around for a bargaining agent.

Q Do you know which one of the men began to contact labor organizations?

A I said that as I was a senior mechanic I would find and see if I would find one to represent us.

Q Did you contact one that was interested in

representing you?

A Yes.

Q What is the name of that labor organization?

A 447, the International Association of Machinists.

Q Is that District 15?

A Yes.

Q Who did you contact at Local 447?

A The name is Henry Rizzo.

Q What did you tell Mr. Rizzo?

A I told him we were interested in forming a bargaining unit. He said he would set up a meeting with the men.

Q Did Mr. Rizzo set up the meeting with the men?

A Yes.

Q Do you recall when that meeting was held?

A I think it was the 6th of July.

Q Where was it held?

A Well, he came to the back of the plant where the night crew was working. I had met him out in front of the place.

Q Who was present besides you and Mr. Rizzo at this meeting?

A There were the two Leonardi brothers and John Winfield and then there was Joe Hezben who lives on the premises there.

Q Mr. Herban, do you know what his position is with the company?

A He is an operating engineer.

Q He lives on the premises of the company?

A Yes.

Q Is he a guard at night?

A No.

Q Do you know what arrangement he has with the company that he lives on the premises?

A I don't know what the arrangements are, I think if somebody lives on they get cheaper insurance or something.

Q You mean the company gets cheaper insurance?

A Yes.

Q And Mr. Herban, did he speak to Mr. Rizzo also?

A No.

Q Who actually spoke with Mr. Rizzo that day?

A There was four of us or five of us.

Q Could Mr. Herban hear what Mr. Rizzo was saying?

A No.

Q What was Mr. Herban doing while Mr. Rizzo was talking to you?

A Pete went and told him he was a cousin of mine who is going to show him around the place and then one of the security guards of the place said no stranger or

anybody that has no business on the property, they had to leave so we left and we went across the street.

Q Across the street from the --

A -- plant.

Q What did Mr. Rizzo say that evening when he came down to the plant?

A He thought 138 had a contract with maintenance, he said, but it will all come out in the wash and he distributed cards for joining the union and discussed what benefits his union had.

Q Did each of the men who was present take a card?

A Yes.

Q Did you take a card?

A Yes.

Q Did anyone fill out their cards that evening as far as you know?

A As far as I know I think they waited for -- I took some extra cards and distributed them to the men that were not present.

Q Did you give Mr. Rizzo your card that evening?

A No.

Q Did Mr. Rizzo tell you what to do with your card when you decided whether or not you were going to fill it out?

A Yes, he said to me mail them back to him.

Q You mentioned Mr. Rizzo gave you extra cards to distribute to men that weren't present. Did you distribute any cards for Mr. Rizzo?

A Yes, I gave them to Louis Leonardi. I think he gave them to George Bartoli and Sal.

JUDGE LIPTON: Just testify to what you know. You were not present when Mr. Leonardi gave the cards to somebody else?

THE WITNESS: No.

JUDGE LIPTON: Who was this Pete or Louis Leonardi?

THE WITNESS: Louis.

JUDGE LIPTON: All right, Ms. Kave.

Q Did you collect the cards?

A Yes.

Q What did you do with them?

A I mailed them back to Lenny Rizzo.

Q How long, can you approximate how long from the time you met with Mr. Rizzo in the parking lot, how long a period of time went by until you sent him the cards?

A About a week and a half, I think.

Q Did you hear from Mr. Rizzo after you sent him the cards?

A Yes.

Q Did you see him in person?

A No, he telephoned me at home.

Q What did he say to you?

A He said he mailed the cards in and the dirt is going to fly once the company receives them.

JUDGE LIPTON: This is Mr. Rizzo?

THE WITNESS: Yes.

JUDGE LIPTON: Who told you he mailed the cards in?

THE WITNESS: He mailed the cards to Mr. Rizzo.

JUDGE LIPTON: Then Mr. Rizzo phoned you?

THE WITNESS: Yes.

JUDGE LIPTON: What did he say?

THE WITNESS: He said actual start in the company. He mailed a letter asking for our representation.

Q Mr. Nare, do you have any idea of what the date was you spoke to Mr. Rizzo on the telephone?

A Not exactly. It was in July.

Q Maybe I can help you.

You said you met with Mr. Rizzo on July 6?

A Yes.

Q Does that give you any point to figure out as to how long it was until you spoke to him on the telephone?

A Must have been about the 16th or 17th, somewhere in there.

Q Up until the time when you spoke to Mr. Rizzo on the telephone had any supervisors at the company spoken to you about the union?

A No.

Q After you spoke to Mr. Rizzo on the telephone and he indicated to you that he had sent a letter to the company, did any supervisor mention the union to you?

A After he talked to me on the telephone?

Q Yes.

A No. Just the first I heard the company received a letter was Leonardi came --

Q Leonardi came and spoke to you one evening?

A Yes.

Q What did the Leonardi brothers say to you?

A They were on the night crew and they went up to the office to get their orders for the night.

Dave Frances immediately jumped on them "Who was responsible" --

JUDGE LIPTON: This is hearsay. Are you going to offer either one of those brothers to testify?

MS. KAVE: Yes.

JUDGE LIPTON: We don't want the hearsay. We will have the witnesses, what they told him.

Q Mr. Nare, did any supervisor or representative of management ever question you directly about the union?

A Yes.

Q Who?

A Dave Frances, and Thomas Monahan.

JUDGE LIPTON: And Mr. Monahan?

THE WITNESS: Yes.

Q What did Mr. Frances question you about?

A He asked me who was responsible for associating the union and if I belonged to this union before or how we found this union and the company wouldn't stand for the union, he said.

They will find ways to cut down on either -- send the trucks out for repair or discharge men or something.

JUDGE LIPTON: What was the date of this conversation?

THE WITNESS: This was after the 20th I think when they -- the same evening they received the letter or when --

JUDGE LIPTON: How do you know they received the letter?

THE WITNESS: I didn't know. I mean -- we assumed --

JUDGE LIPTON: The same evening you spoke to the Leonardis?

THE WITNESS: Yes.

Q Mr. Nare, did Mr. Frances question you about the union on only one occasion?

A No.

JUDGE LIPTON: Just a moment. We still haven't established a date of this first conversation except that it was the date he spoke to the Leonardi brothers.

You will have to fix a date a little more precisely.

Q Mr. Marc, in order to give you some judgment as to when the date was do you remember when it was in relationship to when you were actually discharged? Was it two weeks before you were discharged?

A No, about three weeks before I was discharged.

JUDGE LIPTON: How long after the telephone call from Mr. Rizzo?

THE WITNESS: I think it was about the 20th somewhere. This would be in question. I think Mr. Rizzo about the 16th or something.

Q Were you ever questioned by Mr. Frances about the union on any other occasion other than this first occasion you mentioned?

A Yes.

Q How often?

A The conversation was coming up and down before the first layoff, pretty regular.

Q Could you give me some idea about what you mean by regularly? Was it once a week, once a day?

A Almost once a day.

Q Where would Mr. Frances question you about the union?

A In the back in the repair shop, back of the plant.

Q Was there ever anyone else present besides Mr. Frances and yourself?

A One time I was talking to him Mr. Monahan was there.

Q Did Mr. Monahan say anything to you about the union?

A Yes, he asked me if I was the one responsible for it. He said he now probably -- everybody will get laid off because I started waving the flag around and one thing and another.

Q Can you remember when it was that Mr. Monahan said this to you?

A This was about two days after we first found out the company was notified.

Q Mr. Nare, were any employees from the maintenance department laid off or discharged from the company before you were?

A Yes.

Q Who was?

A John Winfield and Sal.

Q Were they the first men laid off?

A Yes.

Q Can you remember the date they were laid off?

JUDGE LIPTON: It is submitted in the answer. He may answer.

Q You can answer that question. Do you recall when

they were laid off?

A The latter part of July, about.

Q Were you present w[illegible]ey were laid off?

A Not exactly when th[illegible]eived their checks. They came over to me and said they were laid off.

Q That is how you found out they were laid off?

A Yes.

Q Did they say what reason had been given to them for their layoff?

JUDGE LIPTON: Are they going to testify?

MS. KAVE: Yes, they are.

JUDGE LIPTON: You don't have to get it through this witness. It is unimportant what they told him. What they were told and they are going to testify --

MS. KAVE: In a sense it is part of the res gestae. It is immediately, spontaneously after they were laid off.

JUDGE LIPTON: Do you have any question that your witnesses, Mr. Winfield and Mr. DiSomma will have any problem as to the reason that was given them in their testimony?

MS. KAVE: No.

JUDGE LIPTON: You don't have to get it through hearsay on the res gestae.

Q Did you speak to Mr. Frances or Mr. Monahan about the layoff of Mr. DeSomma and Mr. Winfield?

A Yes, Mr. Frances said, "Now see what your union can do for you. There's a telephone", he said, "you can save yourself a dime if you want to phone the union."

Q That is what Mr. Frances said to you?

A Yes.

JUDGE LIPTON: When was this?

THE WITNESS: This was when the two of them were being laid off.

JUDGE LIPTON: The same day?

THE WITNESS: Yes.

Q Were Mr. Winfield and Mr. DiSomma present when Mr. Frances said this?

A Yes.

Q Was there anyone else present?

A I think Monahan was there.

Q Did you respond to Mr. Frances when he said this to you?

A Yes. I couldn't get an outside line.

Q Did you ever contact the union about the discharge?

A Yes, that evening I phoned and couldnot contact Mr. Rizzo but he phoned me back that evening.

I think two days later he came out to the plant, wanted to set up a meeting with the plant officials.

Q Do you know if Mr. Rizzo ever had a meeting with

the plant officials?

A I don't think so.

Q After Mr. DiSorma and Mr. Winfield were laid off was anyone else laid off before you?

A Yes, one-third, the next third, the Leonardi brothers were laid off.

Q Were you present when they were laid off?

A Not exactly.

Q How did you find out they were laid off?

A Well, Louis showed me his check, I mean, long distance and waved his hand from the other end of the plant that he was going too.

Q When were you laid off?

A The 8th of August.

Q And in between the time that the first two men were laid off and you were laid off did Mr. Frances speak to you about the union?

A Yes, we used to joke about it. I mean, he walked by and rubbed his fingers under his chin, "Where are you going to work next week?"

Q Who laid you off from the company? Who told you that you were discharged?

A Dave Frances.

Q What did Mr. Frances tell you?

A He said, "They sent your check over from the office."

He said his hands were tied, he had nothing to do with it, orders came from upstairs.

Q Did he give you any reason why you were being laid off?

A No.

Q Did you ask him why you were being laid off?

A Well, it was obvious I mean. That was the reason we were being laid off.

JUDGE LIPTON: Never mind what was obvious. Did he say anything to you?

THE WITNESS: No, he just said, "I have bad news for you", that is all he said. "The check is being sent, your check, over from the office."

Q Is Thursday the normal day that you receive your check?

A This was Wednesday, day before payday.

Q When do you normally get paid?

A On Thursday. He said, "You are not going to take this laying down, are you? What is this union going to do for you?"

JUDGE LIPTON: This is the same conversation?

THE WITNESS: Yes.

Q Did he say anything else?

A No, that is all. He just apologized, said his hands were tied.

JUDGE LIPTON: Wait a minute. When you say he apologized you mean when he told you his hands were tied or did he say "I apologize"?

THE WITNESS: No, he just said his hands were tied, he couldn't do anything for us. He said the company laid us off.

Q Mr. Nare, did Mr. Frances mention to you before you were laid off anything about that you were not working fast enough?

A No.

Q Anything the work was slow?

A No.

Q Between the time the first two gentlemen were laid off and the time you were laid off did you work any overtime?

A Yes.

Q Can you recall how much overtime you worked?

A One evening I got stuck out on the road because they were shipping beams into the city and the truck broke down.

I couldn't get back one time, one evening. Another evening he asked me to stay. Monahan asked me to stay to get one of the machines up, they needed it for the next morning to clean the kilns out.

Q Did you ever discuss the discharges with Mr. Monahan of the four men before yourself?

A No.

MS. KAVE: I have no more questions of Mr. Nare at this point.

JUDGE LIPTON: Mr. Donelan?

MR. DONELAN: Yes, sir.

CROSS EXAMINATION

Q (By Mr. Donelan) Mr. Nare, you indicated that you received periodic increases from the company at the time you started to the time you were discharged; is that correct?

A Yes.

Q You also indicated the time of your discharge or immediately prior to perhaps seven or eight other men were working in the maintenance at Clearview; is that correct?

A Yes.

Q I believe you gave us the names. Was the maintenance department working on anything in particular during the summer preceding your discharge, Mr. Nare?

A Yes.

Q Could you tell us what you were working on generally during that summer? I am talking about the period June and July.

A Well, they were getting ready to move bears. They bought some war surplus dollys and they were converting them.

Q Is that what they commonly referred to as boggies, Mr. Nare?

A Yes.

Q Would it be a fair statement, Mr. Nare, to say the bulk of the time spent by the maintenance department of which you were a part during June and July of 1973 was spent on converting these boggies to operative use?

A Well, other men spent more time on them. I was more or less maintaining the other equipment.

Q You yourself spent time working on boggies in 1973, June and July?

A Yes.

Q And the other gentlemen you mentioned, Mr. Bartoli, did Mr. Bartoli spend time working on boggies?

A Yes.

Q A considerable period of time during June and July?

A Yes.

Q And the same also would be true for Mr. Louis Leonardi?

A Yes. They mostly worked night though. Once in a while they had time they would put time working on these boggies.

Q And Mr. Winfield, was he also spending a considerable period of time on boggies in June and July?

A Yes.

Q And would this also be true for Mr. DiSomma?
A Yes.
Q I believe you indicated there was another gentleman whose name you don't know who was a welder. Would that gentleman also have been working on these boggies or dollys in June or July?
A Yes.
Q Was this more than one welder working on those, Mr. Nare?
A Yes.
Q Do you know how many welders there were?
A They brought one welder from production, put him on maintenance welding and then they hired another welder.
Q The gentleman they brought from production to work on maintenance, did they bring him over to work on these boggies or dollys?
A Yes.
Q I gather, Mr. Nare, is it a fair statement that the bulk of the maintenance department during June and July of 1973 were working on converting these boggies to some use? Is that a fair statement?
A Yes, most of it.
Q Mr. Nare, I believe in response to the questions put to you by general counsel you were asked to tell if you knew how many employees worked at the Clearview

plant and I believe your answer was it varied between 60 and a hundred; is that correct? Was that your answer, Mr. Nare?

A Sometimes it could probably even go over a hundred.

Q And sometimes it would be down to 60, am I correct? I don't want to misread your statement.

A Yes.

Q Mr. Nare, was the work that Clearview did seasonal? Were there periods of time when the work force was relatively low and the periods of time between were substantially high?

A Yes, due to the contracts they had.

Q I gather, Mr. Nare, would you know whether or not when work slowed down, whether or not they laid employees off?

A Yes, but I don't think there has ever been a record of laying anyof the maintenance department off.

Q Mr. Nare, when you started with Clearview were you the only maintenance man that they had at that time?

A Yes.

Q Did that condition exist for a considerable period of time where you were the only maintenance mechanic that Clearview had?

A Once in a while they would get, give me a helper. Sometimes they would bring a helper out of production.

Q Would that be for some special project where you needed some assistance?

A Yes. Sometimes I mean I had helpers for a couple of months at a time.

Q But Mr. Nare, would it be fair to state that generally from a period of time that you started, let us say for the first three years of your employment you were in effect the sole maintenance mechanic in the Clearview plant?

A Yes.

Q Did that continue for longer than three years, Mr. Nare?

A Might have been four years.

Q Was it about this time that Clearview hired some other maintenance mechanics?

A Yes.

Q Mr. Nare, would you know the approximate time that occurred when other gentlemen were hired for the maintenance department?

A I think when they were forming Grand Pre-stressed across the street.

Q I gather, Mr. Nare, from the time you started your employment up for a period of approximately four years the only company operating out of the Deer Park premises was Clearview Concrete Pipe Corp? Is that

correct?

A Well, they had another company they called Deer Park Pre-stress.

Q Deer Park Precast?

A Yes.

Q Were you working for Deer Park Precast?

A Maintaining their equipment they were using.

Q Was this a company that was there for a relatively short period of time and then moved off the premises?

A I think part of it was owned by Lehigh Cement or something.

Q You have indicated that you were the sole mechanic and there came a time some four years after your initial employment that other maintenance mechanics or mechanics were hired, I believe you indicated this was at the time they were forming Grand Pre-stressed; is that correct?

A I don't know exactly what dates or when it was.

Q Do you know, Mr. Nare when or could you tell us whether or not there presently exists on their premises where you were working for Clearview a section of that called Pre-stress beds where they pour pre-stress concrete beams?

A Yes.

Q Do you know when those pre-stress beds were built, Mr. Nare?

A I don't know exactly. Might have been '69 or something.

Q 1969?

Mr. Nare, would it be a fair statement to say that the reason for hiring additional maintenance mechanics some four years after you started work was because Clearview Pre-stressed Corp. was just starting to become operative at that time?

MS. KAVE: I object.

JUDGE LIPTON: I will sustain it. The witness is not competent.

You have your own witnesses for the reasons for hiring maintenance people.

Q Mr. Nare, after the four year period and another maintenance mechanic was hired could you tell us who the first of the mechanics in maintenance was?

A George Bartoli.

Q Was Mr. Bartoli doing the same work you were doing at that time?

A Part of it, and then he was doing welding too.

Q I presume at that point you and Mr. Bartoli constituted the maintenance or machine maintenance department at Clearview, Grand?

A Yes.

Q How long did the two of you continue to constitute the entire department?

A About six months from then I think.

Q Was someone else hired then at that point?

A Yes.

Q Could you tell us who that was?

A Louis Leonardi.

Q The three of you then constituted the maintenance department; is that correct?

A Yes.

Q How long did that continue, Mr. Nare?

A Oh, might have been another six months.

Q I presume that either Mr. Winfield or Mr. DeSomma was hired at that point?

A Mr. Winfield was hired, yes.

Q Then I presume at some later point Mr. DiSomma was then hired, correct?

A Yes.

Q Just to jump back for a minute, Mr. Nare, you have indicated that employment ranged anywhere from 60 to in excess of a hundred people.

Did this employment, number of people employed, did this vary to the best of your knowledge, anyone particular time during the year? Was there any one particular time during the year when employment was highest or lowest?

A Well, in the wintertime they had trouble because of

the weather conditions. Hard to handle concrete products in the winter.

Q But do you know of your own knowledge, Mr. Nare, when employment was at its highest during the year or at its lowest or would you just be guesstimating?

A I feel in the middle of the winter just as busy as it was in the summertime.

Q Mr. Nare, you indicated that sometime in the spring or early summer of 1973 you had discussions concerning a labor organization, and I believe you testified these discussions were with other mechanics who worked at the plant.

A Yes.

Q Were any members or any representatives of the management, that is, from Clearview or Grand, present at the time you had the discussions in the spring or summer of '73?

A No.

Q Did you ever go to any representative of Clearview or Grand in 1973 and tell them you were interested in a union?

A No, I don't think so.

Q You have also indicated that at your request a Mr. Pizzo came to the Clearview premises on what you believed was July 6th, 1973; is that correct?

A Yes.

Q I believe you also indicated that there was a meeting held at that date.

Was there any representative, any management representative of Clearview or Grand asked to attend that meeting?

A No.

Q Were they advised Mr. Rizzo had been invited to the premises that day?

A No.

Q Mr. Nare, you also gave some testimony that Mr. Frances questioned you about the union I believe was the word you used on a regular basis before the layoff?

A Yes.

Q Was there anybody present at the time Mr. Frances had the discussions with you about the union?

A Well, the first dayI think Tom Monahan and Dave Frances were both there present.

Q Was either of the Leonardis present at any time Mr. Frances spoke to you about this union?

A I don't think so.

Q Were Mr. Bartoli and Mr. Winfield or Mr. DiSorma present at any one of these discussions that you stated took place?

A They more or less got each individual off by themselves

and interrogated them about the union.

Q My question was to the best of your recollection were any one of these three or five individuals who are joined with you here today present at any time when Mr. Frances spoke to you?

A When the first layoff was, I mean it was being discussed, the union.

Q Do you know or is this an assumption on your part, Mr. Nare?

A They were there when he told us to telephone the union to see what the union can do for you now.

Q Is this what Mr. Frances said to you?

A Yes.

Q Did he say what union? Did he make a mention of any particular union?

A No.

Q Did Mr. Frances ever specifically discuss with you a union known as local 447 of the International Machinists?

A He asked me if I ever was in them, 447 machinists union.

Q Did he specifically use the words Local 447 or the words District 15?

A Machinists Union. He asked me if I was ever in the machinists union.

Q When did that happen, Mr. Nare?

A This I think was the first night, about July 20th, somewhere in that area.

Q Mr. Nare, you have also testified that Mr. Monahan came to you at one point and asked if you were responsible for the union and that because of it everyone would be laid off.

Is that what you have testified to, Mr. Nare?

A Yes.

Q I believe you also testified that you said this was two days after "we found out the company was notified".

I believe that was your testimony.

Do you recollect having given such testimony, Mr. Nare?

A It was before the first layoff, between the time when they started to ask the two Leonardi brothers, the first day, I mean Dave Frances asked me and before the first layoff I think it was about two days later.

Q But my question is do you recollect having given the testimony this was about two days after "we found out the company was notified"?

A I don't know whether I gave that exact testimony.

JUDGE LIPTON: He doesn't have to recall his testimony. You could ask him directly. Of course the record also indicates what he testified, but if the point is what

the date is there was a sequence of days indicated by the witness. If that is the purpose of your question, to fix the time.

MR. DONELAN: It is not really to fix the time, your Honor. It is to ascertain how the witness knew if in fact he did know that the company had ever been notified by anyone.

JUDGE LIPTON: I asked him that question himself. He only had hearsay information.

Is that correct?

THE WITNESS: Yes.

Q Mr. Nare, since your discharge on or about August 8th of '73 have you sought employment elsewhere?

A Yes.

MS. KAVE: Objection.

JUDGE LIPTON: Objection sustained.

Q Mr. Nare, have you made application for unemployment benefits?

MS. KAVE: Objection.

JUDGE LIPTON: I will sustain it. These are matters -- I don't know whether you are familiar with this, Mr. Donelan, these are reserved for specific back pay proceedings. They are not litigated in these proceedings.

MR. DONELAN: I have no further questions.

JUDGE LIPTON: Redirect?

REDIRECT EXAMINATION

Q (By Ms. Kave) Mr. Nare, at any time in your seven years working for the company were you ever laid off?

A No.

Q You indicated that the first three years I believe you worked as a maintenance man alone with a helper. Since the new men were hired has anyone from the maintenance department ever been laid off other than the current layoff?

A No.

Q While you were working for the company did they ever lay off a substantial number of employees for lack of work?

A Yes.

JUDGE LIPTON: You are talking about production employees?

THE WITNESS: Yes.

Q During these periods of time were you ever laid off?

A No.

Q You testified that a percentage of the time was working on some boggies before you were discharged?

A Yes.

Q I'm not that familiar with the concrete industry. Could you explain to me a little bit better what a boggie is?

A It is a dolly that the pre-stressed beams, they sit in the back of the truck to support the weight. They are 110 feet long some of them, some of them 80 feet.

Q It is a large dolly that you build to support beams?

A Yes.

Q Had you completed work on the boggies at the time you were discharged?

A I think most of them were ready to go.

Q Do you know if there were any that still had to be worked on?

A I think some of the new ones. I don't know whether they were all ready but they were already shipping beams.

Q When did you begin working on these boggies?

A Some of them were already made. I mean, they just had to be converted over but they bought some other ones, war surplus we were reinforcing.

Q What percentage of your time were you spending on boggies at the time you were discharged?

A Well, I could only spend a couple of hours a day because the trucks and fork lifts and everything in maintenance, but some men were working steadily on them.

Q Can you be more precise than a couple of hours a day? Was it two hours, five hours?

JUDGE LIPTON: I take a couple to mean two.

THE WITNESS: Two hours a day, about.

Q What would you do with the other six hours a day?

A Maintaining other equipment.

Q Was that all the equipment that was breaking down?

A Yes.

Q Before you began working on these boggies what did you do?

A Maintaining equipment. We were doing general plant maintenance, even retooling. I mean, they had a night crew on that would retool, change the size of the equipment over for the next day if they wanted them to do different size pipe.

Q Prior to working on the boggies did it ever occur to you that there was lack of work for you to do?

A No.

Q Did Mr. Frances ever indicate to you that the company was going to get slow?

A No, he never did.

Q The only other question I have is prior to your conversation with Rizzo when he indicated to you that he had mailed a letter to the company asking to represent you, did anyone from management question you about the union?

A Prior to that, no, nobody.

MS. KAVE: I have no questions.

JUDGE LIPTON: Recross?

MR. DONELAN: None.

JUDGE LIPTON: The witness is excused. Thank you.

(Witness excused)

JUDGE LIPTON: We will take about a five minute recess.

(Short recess taken)

JUDGE LIPTON: On the record.

MS. KAVE: George Bartoli, please.

Whereupon,

GEORGE BARTOLI

was called as a witness and, having been first duly sworn by Judge Lipton, was examined and testified as follows:

JUDGE LIPTON: Try to speak up when answering questions.

DIRECT EXAMINATION

Q (By Ms. Kave) Mr. Bartoli, would you please spell your name for the reporter and give him your address?

A George Gaetano Bartoli, 1081 Bayshore Avenue, Bayshore, New York.

Q Mr. Bartoli, how long were you working for Clearview Concrete prior to your discharge?

A Two years and eight months.

Q What type of work were you doing for Clearview?

A Mechanic and maintenance work, plant maintenance.

Q Would you give me a brief description of what you mean?

A Mechanic on machines such as payloaders, trucks, fork lifts, anything on wheels.

Q Were you doing any welding?

A Also welding work and plant maintenance work.

Q Who was supervising you on your job?

A Dave Frances.

Q Who hired you for the job?

A Dave Frances.

Q What were you earning at the time you were discharged?

A 5.20 an hour.

Q What were you earning at the time you were hired, if you can remember?

A 4.75.

Q Do you recall how many increases you received?

A I received one after a week or two. He told me if I was good enough I would get a quarter, which I did. Then I got one increase after that.

Q How many hours a week did you work?

A They average out 53 hours a week.

JUDGE LIPTON: How many?

THE WITNESS: 53 hours a week.

Q Was this a regular work week?

A A regular work week.

Q Were any ofthose 53 hours considered overtire?

A 13 of it was overtime.

Q Were you paid time and a half for that?

A Yes.

Q You regularly worked 13 hours a week overtime?

A Correct.

Q Were you working 13 hours a week overtime the week prior to your discharge for the company?

A At that time I might have put in a little more overtime due to the repairs of these boggies.

Q At the time Mr. Frances hired you for the job did he mention any labor organizations?

A No, he said it is non-union so that was it.

Q Prior to June of 1973 did you ever discuss the unions with Mr. Frances?

A No, except in one time I asked him much prior to that if I can get into the truck drivers union which I have 15 years benefit on so that I can continue my benefits which they have with 282, a teamster local. He said he will ask but I never heard about it any more.

Q Are you a personal friend of Mr. Frances?

A Well, I know the man personally.

Q Did you socialize with him outside of work?

A No.

Q When was the first time anyone from the maintenance department mentioned to you joining, that they were interested in becoming members of the union?

A I heard it one evening in around the beginning of July, right, about the beginning of July or the end of June.

Q Who did you hear about it from?

A Louis Leonardi.

Q As best you remember what did Louis Leonardi say to you?

A He says they are going to bring in a union, would I go along with it, would I sign up with them.

Q What was your response?

A I says we'll see as time goes by because nothing happened at that time.

Q Did Louis Leonardi give you any kind of a card to sign for a union?

A Not at that time.

Q Did Mr. Leonardi subsequently --

A He gave me a card later on, week or so after he told me they were going to bring in a union.

Q Where did Mr. Leonardi give you this card?

A In the plant.

Q Was there anyone else present when Mr. Leonardi gave

you the card?

A I don't think so.

Q Were you ever present at a meeting with Mr. Rizzo?

A No.

Q So your first contact with the union was through Louis Leonardi?

A Yes.

Q Did you speak with Mr. Frances about this?

A No.

Q What did you do with the card when Mr. Leonardi gave it to you?

A I held it for about a week to decide whether I should do it or not before I signed it and gave it in.

Q What did you eventually decide to do?

A I figured as long as most of them are going in --

JUDGE LIPTON: Don't testify what you figured. Just testify what you did.

A (Continuing) I signed it a week later and gave it back to Lou Leonardi.

Q Did you speak to any of the other men before you signed it?

A Yes.

Q Who did you speak to?

A Well, I asked most of them if they were going along with it and it took me about a week to decide.

Q Can you remember what day it was that you signed the card?

A Not exactly. I believe it was around the beginning of July.

Q Did Mr. Frances ever question you about the union prior to when the first two gentlemen were laid off at the end of July?

A Yes, from what I gather --

JUDGE LIPTON: Just a minute. Don't testify what you gather.

He did speak to you?

THE WITNESS: Yes. He asked me --

JUDGE LIPTON: Wait a minute. Just wait for the next question. You were just asked if he did.

Q Can you recall when Mr. Frances first brought up the subject of the union?

A He brought it up after the company received notice that 447 was representing us.

Q How did you know the company had received notice that Local 447 is representing you?

A I believe Leonardi when he came in one evening -- see, he was working nights. Frances asked him about it first.

Then from there on we all knew about it, that there was a notice in the office.

JUDGE LIPTON: There was a what?

THE WITNESS: A notice from the union. In other words --

JUDGE LIPTON: Who told you about it, Mr. Leonardi?

THE WITNESS: Yes.

JUDGE LIPTON: Mr. Frances didn't tell you about it?

THE WITNESS: No, sir.

Q Did Mr. Frances ever mention to you that the company had received a letter from the union?

A Yes.

Q He did? What did Mr. Frances say to you?

A He wanted to know who started it and who brought the union in and so forth and so on. I told him I did not know.

Q Can you remember when he first asked you this?

A Around the beginning of July.

Q Was this prior to when you signed the card for the union?

A Well, I resent there is a little mention there because I went on vacation in between so I have to straighten that time out.

Q Let us see if we can straighten it out now.

When did you go on vacation?

A After I turned my card in I went on vacation.

Q How long did you go on vacation?

A I was away one week.

Q Can you remember the week that you were on vacation?

A Not exactly but it was the same week that Salvatore DiSomma and John Winfield got laid off. I was on vacation that week.

Q The week of July 26th.

Before you went on your week's vacation did Mr. Frances ever question you about the union?

A No, he did not. He asked me after I came back.

Q So the first time Mr. Frances ever mentioned the union to you after you came back from your vacation --

A After I came back from vacation.

Q So that was when Mr. DiSomma and Mr. Winfield were laid off?

A Yes.

Q What exactly, if you could repeat, what did Mr. Frances say to you about the union?

A I heard it the same day they both were laid off. I was in the plant. I was on vacation but I was fixing my car on my own time in the plant.

When they got laid off that is when I heard about the union and --

Q Were you present when they were laid off?

A Yes.

Q Did you hear what Mr. Frances said to them?

A No.

Q How did you find out they were laid off?

A Salvatcre DiSomma came to me and told me he got laid off with the same -- with the statement saying that Monahan was right near Dave Frances and some laborers, they were all in a huddle and Monahan passed a remark saying two at a time each week we will all go.

That was -- I was still on vacation when I heard that.

Q Did you speak to Dave Frances that day?

A I asked himabout the rumor. He says, he says, well, I don't know. He just acted dumb.

Q You asked him about what rumor?

A As to two a week going.

Q Did Mr. Frances say anything about the union to you on the day that John Winfield had been laid off?

A No, I didn't see Frances any more because I repaired my car and left for home.

Q What day of the week was that?

A On a Thursday.

Q Did you see Thomas Monahan that day?

A Yes.

Q Did Mr. Monahan say anything to you on that Thursday?

A No.

Q When did Mr. Frances mention the union to you directly?

A When I came back to work.

Q When did you return to work?

A The following week.

Q Monday?

A Following week after Thursday that -- when they got laid off, Winfield and DiSomma.

Q What did Mr. Frances say to you?

A Well, he kept asking me practically daily who brought these people in and, the union, and I told him I didn't know.

It got to the point where I says to him, "Dave, don't ask me any more because I don't know and I'm not going to tell you if I did know" and I finally put an end toit.

Q How often did Mr. Frances ask you about the union?

A Several times, five, six times.

Q Was this on a regular basis before you were laid off?

A Before I was laid off, right.

Q Did Mr. Monahan ever discuss the union with you?

A Yes. He passed a remark also saying that "I'm surprised at you, George, you know you are not going to get nowhere, you are going to get laid off, they are going to lay off two at a time until yourself all go,

whoever signed up".

Q Do you remember when Mr. Monahan said this to you?

A When I went back to work.

Q How long after you got back to work?

A Well, I can't tell you exactly. It got so the whole plant knew it, the whole -- the rumor went throughout the plant.

I could be working with a laborer and he'd say, "I hear you are going soon".

JUDGE LIPTON: Never mind that.

Q When Mr. Frances spoke to you about the union on this regular basis where were you when he questioned you about the union?

A Wherever he would see me. I was all over the plant. I was never in one --

Q Could you give me an example?

A Sometimes in his office, sometimes out in the field while we are walking together.

Q Was there ever anyone else present?

A I don't recall at that time. It seemed he always tried to --

JUDGE LIPTON: Never mind. Just what you recall he said at a specific time.

Q Were you present when Peter and Louis Leonardi were laid off?

A Yes -- no, I was not. I was out in the field.

Q By out in the field what do you mean, working on a job?

A The plant is 10 blocks long. I could be anywhere in the plant.

Q How did you find out they had been laid off?

A When I got back to the shop.

Q Who told you they had been laid off?

A They were packing up their tools and getting ready to leave.

Q When were you discharged from the company?

A August 8th.

Q Who laid you off?

A Frances, Dave Frances.

Q Was that a Wednesday?

A On a Wednesday.

Q What did Mr. Frances say to you at the time?

A He says, "I'm sorry that I have to let you go, George" he says, "Here is your check", he says, "all this is coming from the office, it is beyond my control."

He shook my hand and says, "I'm sorry it happens this way."

Q Did Mr. Frances give you any reason why you were being laid off?

A No.

Q Did you ask Frances why you were being laid off?

A I did not. The general rumor was in the plant.

MR. DONELAN: Objection.

JUDGE LIPTON: I will sustain it. It may be stricken.

Q Had Mr. Frances complained about your work prior to --

A Never.

Q Was there any indication to you that the work was slowing down before you were discharged?

A No.

Q You said you took one week's vacation about three weeks prior to being laid off?

A Yes.

Q Is that all you were entitled to, one week's vacation?

A No, I took one week because they were a little busy at the time and I only took the one week and they paid me for the second week.

I usually get two weeks.

Q So you received double salary and worked on your vacation?

A Right.

MS. KAVE: I have no further questions.

CROSS EXAMINATION

Q (By Mr. Donelan) Mr. Bartoli, you indicated

that you were working a regular work week of 53 hours, 40 regular time, 13 overtime?

A Yes, sir.

Q How long had that been going on, Mr. Bartoli?

A The whole year.

Q All of 1973?

A Yes.

Q Mr. Bartoli, were you spending a considerable amount of your time working on boggies or dollys in 1973?

A I supervised the conversion of that.

Q Do you know how many dollys they converted or worked on?

A Six. Hold it, 12.

Q You were supervising the work?

A Yes, I distributed the work to the rest of the men.

Q And were you spending a considerable amount of time in supervising the work for the conversion of these dollys?

A I was jumping from dollys to the plant.

Q You indicated you were supervising other men in their work on these boggies or dollys?

A Yes.

Q Which men were you supervising, Mr. Bartoli?

A All of them.

Q All of them? You were saying Mr. Winfield, Mr. DiComma, the Leonardis? And was Mr. Nare also working on

boggies?

A Partly.

Q Were there any other gentlemen working on them?

A A fellow by the name of Artie and another fellow which I don't know his name. Couldn't speak English. He was a new man.

Q Do you know when the work on boggies started, Mr. Bartoli?

A Oh, about a month and a half to two months prior to the time we got laid off.

Q Were you doing work on boggies in the early part of 1973?

A Not the early part. Around March.

Q Around March?

A March, April we started on them.

Q Would you say the work on the boggies continued on a rather steady basis from March or April up to the end of July of '73?

A In a way, yes.

Q There was some testimony, Mr. Bartoli, where you talked about a discussion that you had with Mr. Frances relating to a certain letter. Do you recollect that testimony, Mr. Bartoli, that you had a discussion with Mr. Frances concerning a letter from a union?

A Just that they wanted to know who started it.

instigated, brought the union into the plant.

Q Mr. Bartoli, at any time did you have any discussions with Mr. Frances where he said to you that Clearview had received a letter from a union?

A No.

Q So am I correct in assuming that no letter was ever mentioned in any of your discussions with Mr. Frances?

A Not with Dave Frances.

Q Was there ever any letter mentioned and any discussions with Mr. Monahan?

A No, sir.

Q Was any letter ever mentioned at any discussions you had with any other supervisor of Clearview or Grand?

A No, sir.

Q You testified you went on vacation during the week -- was it the two Leonardis that were laid off or DiSomma and Winfield?

A DiSomma and Winfield.

Q I believe you also testified you came in to do some work on your own car?

A Yes.

Q On one particular day?

A Yes.

Q There was also some testimony, Mr. Bartoli, about Mr. Monahan having supposedly said about letting the

employees go two by two. Did you hear Mr. Monahan say this?

A No, I did not. I was in the --

JUDGE LIPTON: You never personally heard Mr. Monahan say that?

THE WITNESS: Oh, I heard Mr. Monahan say that, yes. Never at that time, not that day.

JUDGE LIPTON: The question is did you hear Mr. Monaha say this.

THE WITNESS: Yes, I did.

JUDGE LIPTON: Did he say it to you?

THE WITNESS: Yes, he did.

Q Did he say it to you on the day you came in to repair the car when you were on vacation?

A No, sir, after I went back to work.

Q Was it immediately after you went back to work or some period of time elapsed?

A During the week, during the week after the first two got laid off.

Q Mr. Bartoli, did you complete an application for unemployment benefits?

MS. KAVE: Objection.

JUDGE LIPTON: Sustained. Don't persist. You have had a ruling.

MR. DONELAN: Your Honor, I'm not getting into the

area whether or not benefits were collected. I am merely trying to get on the record what reasons were given by the charging witnesses as to why they were seeking unemployment benefits which is very direct development to their state of mind at the time.

JUDGE LIPTON: Do you have copies of their application?

MR. DONELAN: No. I do have a letter that we solicited from the New York State Unemployment Insurance Department.

JUDGE LIPTON: Do you have copies of their applications?

MR. DONELAN: No, sir, I do not.

JUDGE LIPTON: Doyou have a transcript of anything?

MR. DONELAN: A transcript? I have a letter --

JUDGE LIPTON: Do you have a transcript of anything they testified to before Unemployment Insurance?

MR. DONELAN: No, sir, I do not.

JUDGE LIPTON: You are merely engaging in an exploratory course of questioning on this?

MR. DONELAN: Well, your Honor, I have a letter from Unemployment which quotes from their applications.

JUDGE LIPTON: That is pure hearsay. This witness doesn't know the letter.

MR. DONELAN: Then perhaps --

JUDGE LIPTON: I sustain the objection.

MR. DONELAN: Your Honor, may I be permitted to ask the witness directly the reasons if any given for --

JUDGE LIPTON: For what?

MR. DONELAN: For applying for unemployment insurance.

JUDGE LIPTON: No, you may not. I sustain the objection.

MR. DONELAN: I have no further questions.

REDIRECT EXAMINATION

Q (By Ms. Kave) Mr. Bartoli, you testified you were working with a man who could not speak English besides the six men who were discharged.

A Yes.

Q How long beforeyou were discharged was this man who could not speak English hired?

A A month or so, a month and a half before.

Q What type of work was he doing?

A Mostly welding work.

Q Was he a trained welder?

A No, sir.

Q Was he being trained to weld?

A He was an apprentice.

Q Were you training him how to weld?

A Yes.

JUDGE LIPTON: Do you know the man's name?

THE WITNESS: Not offhand, sir, because he couldn't even speak English and Dave Frances brought him in and said show him what to do.

JUDGE LIPTON: What did you call him?

THE WITNESS: It is a tough thing to say. I had to get an interpreter to do the talking for me.

Q Do you know what language he spoke?

A Portugese.

Q What percentage of your time before you were discharged was spent working with the dollys, with the boggies, excuse me.

A Well, I would say 50 percent.

JUDGE LIPTON: This is your own time? Of your time?

THE WITNESS: Of my time.

Q What were you doing the other 50 percent of the time?

A Plant work and repairs.

Q You said there were approximately 12 boggies you were working on?

A Yes.

Q Were they all completed at the time you were laid off?

A Yes.

Q What were you doing at the time you were laid off, what kind of work?

A Plant work, plant maintenance and general mechanic.

Q Before you started working on the boggies what type of work were you doing?

A Plant maintenance and general mechanic.

Q When was the work on boggies begun?

A About two months prior to the date we got laid off.

Q Before you started working on the boggies did you always have a full day's work?

A Yes, ma'am.

Q Did you work overtime?

A Yes.

JUDGE LIPTON: What is the answer?

THE WITNESS: Yes.

JUDGE LIPTON: This is getting repetitious.

Q Were you in the two years and eight months --

A Two years, eight months --

Q Were you ever laid off in the two years and eight months for lack of work?

A No.

MS. KAVE: That is all.

JUDGE LIPTON: Have you concluded?

MS. KAVE: Yes.

JUDGE LIPTON: Mr. Donelan?

MR. DONELAN: Yes.

JUDGE LIPTON: Any recross?

MR. DONELAN: No, your Honor.

JUDGE LIPTON: The witness is excused. Thank you.

(Witness excused)

JUDGE LIPTON: Call your next witness.

MS. KAVE: Could we go off the record for one second?

JUDGE LIPTON: Off the record.

(Discussion off the record)

JUDGE LIPTON: On the record. Call your next witness.

MS. KAVE: I will call Mr. Louis Leonardi.

Whereupon,

LOUIS LEONARDI

having been sworn by Judge Lipton, was examined and testified as follows:

DIRECT EXAMINATION

Q (By Ms. Kave) Mr. Leonardi, would you state your address for the reporter, please.

A My address is 528 15th Street, West Babylon, New York.

Q Mr. Leonardi, were you working for Clearview Concrete at the time of your discharge?

A Yes, I was.

Q How long had you been working for Clearview?

A Oh, excuse me, I wasn't working for Clearview Concrete, I was working for Grand Pre-stress.

Q Were you hired originally to work for Grand Pre-stress?

A I was hired to work at Clearview. Then I was transferred over.

Q How long had you been working for Clearview and Grand Pre-stress?

A Approximately two and a half years.

Q What type of work were you doing?

A Regular mechanical work, plant maintenance, machinery repairs, truck repair.

JUDGE LIPTON: Would you try to speak up, Mr. Witness? Speak up so that everybody in this room can hear you.

THE WITNESS: Yes.

Q Were you doing any welding work?

A Very little.

Q By plant maintenance you mean you were repairing broken down --

A Pipe machinery and setting up the pipe machinery for the next day. I worked on the night shift.

Q What were your hours?

A My hours were from 4 to midnight.

Q Who supervised you?

A Mr. Frances.

Q Was Mr. Frances present on the night shift?

A No, Mr. Frances used to leave anywhere from between 5 to 7 dclock at night.

Q Was there anyone there present who supervised you at night?

A No.

Q Who hired you for the job?

A Mr. Frances.

Q At the time when Mr. Frances hired you did he say anything to you about unions representing the maintenance men?

A No, he didn't.

Q How much were you earning at the time you were discharged?

A $5.20 an hour.

Q Can you remember what you received when you were hired?

A When I was hired I received $4.65.

Q How many increases did you receive?

A I received two increases.

Q Prior to June of 1973 did you discuss with any of the maintenance men forming or joining a union?

A Yes, there was some general talk and what you may call it, disenchantment with the job and we just generalized, you know, saying we should get a union, we have no benefits, we have no representation.

Every time we want, you know, if we want to make a decent living we have to go in and they tell us, "If you don't like it -- "

JUDGE LIPTON: The question was did you discuss forming a union and your answer is yes?

THE WITNESS: Yes.

Q Let me ask you this, did you ever attempt to join any of the other three unions that were representing employees in the plant?

A Yes, I did.

Q Which union did you attempt to join?

A All three.

Q Were you denied membership to all three?

A Yes, I was.

Q You just stated you discussed this with some of the men, joining a labor organization.

Was anything decided what you would do?

A We decided to stay within the realm of the construction business and to get a union that would be recognized by the company.

Mr. Nare had been in a few unions from construction companies before so we, you know, we accepted what he said.

This was a union from construction. We tried -- he had once before tried to get a representative from the teamsters down and the man came and then he never heard from him again.

And at another job he was at he was in another union.

JUDGE LIPTON: Do we need all this, Ms. Kave?

MS. KAVE: No, it is not necessary.

Q Did anyone finally contact a union?

A Mr. Nare contacted the union.
Q Did anyone from the union come down?
A Yes, Mr. Rizzo.
Q Did you meet with Mr. Rizzo when he came down?
A Yes, I did.
Q Do you remember the date when Mr. Rizzo came down?
A It was in the -- I don't know the exact date. It was in the early part of July, around the 4th it was, I believe.
Q Were you present when Mr. Rizzo came down?
A Yes, I was.
Q Who else was present?
A Mr. Winfield, my brother Peter and Mr. Nare, Mr. Herban and a security guard.
Q Mr. Herban and the security guard, did they hear what Mr. Rizzo was saying? Were they part of the group?
A No. We had to leave the premises because anybody without personal -- anybody without business on the property had to leave the property.
Q So where did you go?
A We went across the street to an empty lot.
Q What did Mr. Rizzo have to say?
A We explained, we told him about our problems and said we were interested in joining the union and he gave us some cards and explained to us different benefits that

we might be able to get.

Told us, you know, to get everybody that wasn't in the union to see if they could join, try to get a majority.

Then he gave us some cards to sign.

Q Did you sign a card that evening?

A No, I didn't.

Q As far as you know did anybody sign acard that evening?

A I have no knowledge of that.

Q Did he give you extra cards to give to the other men?

A Yes. I asked for the cards.

Q Did you speak to any of the other employees?

A Yes, I did.

Q Who did you speak to?

A I spoke to my brother and I spoke to Mr. Bartoli and Mr. DiSomma.

JUDGE LIPTON: Who was the last one?

THE WITNESS: Mr. DiSomma.

MS. KAVE: Speak up.

THE WITNESS: Sorry.

Q Did you give any of these men cards to sign for the union?

A Yes, I did.

Q Who did you give cards to?

A I gave a card to my brother, I gave a card to Mr. Bartoli and I gave a card to Mr. DiSorma.

Q Can you give me any idea over what period of time this took place that you handed out the cards?

A It was the next day.

Q That would be July 7th?

A I don't know the exact date. The day after the meeting.

Q During this period of time, around the first two weeks in July, did any supervisor from the company mention a union to you?

A No.

Q Did anyone from management mention a union to you?

A No.

Q Did you ever sign a card for the union?

A Yes, I did.

Q Do you recall when you signed a card?

A I signed the card, I believe it was the second day after the meeting.

Q What did you do with it?

A I gave it to Mr. Nare.

Q What was the next thing you heard about the card?

A Mr. Nare was supposed to get in touch with Mr. Rizzo and send the cards back to him.

Q Did Mr. Nare ever inform you that he had sent the cards to Mr. Rizzo?

A Yes, he did.

Q Can you recall when that was?

A It was within the same week.

Q You mean within the same week that you gave him your card?

A Within the same week that we had the meeting. It was only about a week or seven or eight days.

Q Had gone by from the time you met Mr. Rizzo?

A Yes.

Q Can you recall when you first became aware that management knew that you had signed cards for the union?

MR. DONELAN: Objection.

JUDGE LIPTON: Sustained.

Ms. Kave, don't assume anything in your questions that the company was ever aware.

Q Did there come a time when Mr. Frances asked you about the union?

A Yes.

Q Can you give me some idea when that was?

A It was approximately a week before the first two boys got laid off, Mr. DiSomma and Mr. Winfield.

Q Do you know when Mr. DiSomma and Mr. Winfield were laid off?

A They were laid off the last week in July.

Q About three weeks into July?

A Right.

Q How did Mr. Frances bring up the topic of the union?

A We used to go in at four o'clock and we would go into his office to get our work assignment for the day.

Q Who do you mean by we?

A My brother and myself.

We went in this one day and Mr. Frances questioned me, wanted to know what kind of a union I was in when I worked for a bus company.

Q What did you respond?

A So I told him I worked for Transit Union 1131 and he asked me if this has anything to do with 447 of the Machinists Union and I said no.

Q Did Mr. Frances ask you anything else on this particular evening?

A No, he just let it go.

Q Who else was present when Mr. Frances asked you this?

A My brother was present at the time.

Q Was there anyone else present?

A No one else, no.

Q Where did this take place?

A In Mr. Frances' office.

Q Around what time of day was it?

A It was approximately four o'clock in the afternoon.

Q After this first comment inquiring about your prior membership in the union did Mr. Frances ever bring up the union again?

A Yes, every day.

Q He brought it up every day?

A Every day until the time I was laid off.

Q What would he say, the same thing every day?

A No, he would ask different remarks, you know.

JUDGE LIPTON: You will have to do this a little more systematically.

Every day?

THE WITNESS: At least once every day.

JUDGE LIPTON: Once a day? Take it from the first conversation, after the original conversation.

Q The initial conversation.

JUDGE LIPTON: And try to keep it to the terms of the conversation, what was said.

THE WITNESS: Approximately the second day after he confronted me about the bus union he asked me who started the union.

"I know you guys signed cards, who started it?" And I wouldn't answer him. I didn't want to incriminate anybody.

Q Did he ask you that question every day?

A Not the same question. He would make snide remarks like saying --

MR. DONELAN: Objection.

JUDGE LIPTON: Strike that. Just state what was said.

Q What was said?

JUDGE LIPTON: By Mr. Frances and by yourself or anybody else present.

Q Give us an example of the remark.

A "The companies are not going to put up with it. You guys are all going to get laid off. You went about it the wrong way," things like that.

Q You said he said this to you every day over how long a period of time?

A Until the time I was laid off.

Q Can you be more specific? Was it over a period of a month or two weeks?

A A period of two to three weeks.

Q Did Mr. Monahan ever mention the union to you?

A Yes, he did. I don't remember approximately what date it was though. He would come up.

JUDGE LIPTON: Was it after the first discharges?

THE WITNESS: No, it wasn't. It was before the first discharges.

JUDGE LIPTON: How long before the first discharges?

THE WITNESS: A few days. He would come up and ask us who started the union -- ask me, I'm sorry. He asked me, you know, who started the union.

"You guys are crazy, you are not going to get away with it". The same general questions that Mr. Frances would ask.

Q Where did Mr. Monahan speak to you?

A In the back part of the plant.

Q Were you alone with Mr. Monahan?

A Most of the time, yes.

JUDGE LIPTON: Well, at other times who was also present?

THE WITNESS: I really couldn't remember. I don't recall it at this time.

Q Did Mr. Monahan only speak to you on one occasion?

A No, five or six times.

Q How did you hear that or were you present when Mr. DiSomma and Winfield were discharged?

A Yes, I was.

Q Where did this take place?

A It took place in back of the shop. I went to work and went in to Mr. Frances' office and he said to me and my brother --

Q Speak up, please.

A He said to me and my brother, "I want to show you

something", and he brought us to the back of the shop.

Mr. Winfield was changing a tire on a big machine and he said, "You better grab that tire off for Mr. Winfield."

As I grabbed the tire I heard him say behind me, "We don't need you any more, we are getting slow, here is your check" to Mr. Winfield.

He then went around the corner of the building and I saw him talking to Mr. DiSomma but I didn't hear what he said.

Mr. Winfield came over and says,"I'm laid off, what do I do?"

So I says, "Go see Earl, see if he can say something to the union."

Then I went over to Mr. Winfield and he thought it was a joke. He thought Mr. Frances was only kidding around until I told him it was for real.

Then I went back to the shop and I heard Mr. Frances say, "You hear, all you guys hear me say that we are slowing down, we don't need you".

JUDGE LIPTON: Who said this?

THE WITNESS: Mr. Frances.

Q Who was standing by when Mr. Frances said this about slowing down?

A Mr. Monahan was there, my brother was there, Mr. Nare

was there and Mr. Winfield was there. And there was a few laborers but I don't remember exactly who.

Q Did you hear Mr. Frances say anything about the union?

A Yes. He told Mr. Nare, "There is the phone, why don't you see what your union can do now?"

Mr. Nare went over to the phone, couldn't get an outside line.

Q Did anyone respond when Mr. Frances said, "We are slowing down"? Any of the men standing around say anything?

A No.

Q When were you discharged from the company?

A I was discharged the following week, August 2nd.

Q Could you describe what happened to you on August the 1st?

A On August the 1st I came in at four o'clock and went about my regular duties.

I was supposed to go on vacation the following week and I asked Mr. Frances before he left for home, "If you are not going to fire me this week or lay me off is it all right if I go on vacation next week? I would like to get my check tomorrow".

He says, "I will let you know" and went back towards the office.

He came back a few minutes later and he says, "You better come in tomorrow morning at 9 o'clock".

Q Excuse me for one second. Whose office did he go to?

A I don't know. He went towards the back of the shop, towards the office.

Q Continue.

A He came back and he says, "I want you and your brother to come in tomorrow morning at 9 o'clock".

I said why? I surmised I was going to be laid off.

Q Did you normally come to work at 9 o'clock in the morning?

A No.

Q Was this the first time you were asked to come to work at 9 o'clock?

A Yes.

Q Did you and your brother go to work at 9 o'clock the next morning?

A Yes, we did.

Q Did you work a regular day on August 2nd?

A We worked until about 2 o'clock in the afternoon which we were supposed to work until about 5 and then Mr. Frances came over and gave us our checks.

Q Did Mr. Frances say anything to you when he handed you your check?

A Yes, he said, "I'm sorry, it is out of my hands, I hate to see you go."

Q Did you say anything?

A I said that's the breaks.

Q Were you present when Mr. Frances gave your brother his check?

A No.

Q Did you immediately leave the premises of the company?

A I packed my tools and I said good-bye to some of the workers over there and I left.

Q After Frances said it was out of his hands did he say anything else to you?

A No.

Q Did Mr. Frances ever complain to you about your work?

A No.

Q Never received one comment about your work?

A Not really.

Q Prior to your discharge, three weeks before you were going to be discharged did he ever tell you to hurry up in your work, that you were too slow?

A He was always saying that.

Q Did he say that for two years?

A Yes.

Q You were going on vacation the following week. Had

you been asked to work at all during your vacation?

A A few weeks before I was -- when we made out the vacation list they wanted to know who wanted to work the vacation.

Q By they who wanted to know?

A Oh, Mr. Frances.

Q They asked you if you would have wanted to work and be paid double?

A Right.

Q But you opted for your vacation?

A Yes.

MS. KAVE: No further questions at this time.

CROSS EXAMINATION

Q (By Mr. Donelan) Mr. Leonardi, when did you come to work for Clearview?

A It was around March, 1962 I think it was. 19 -- '62 I think it was, about two and a half years.

JUDGE LIPTON: You mean '72.

THE WITNESS: '72, I'm sorry.

Q Were you working on truck maintenance when you came to work there, Mr. Leonardi?

A Yes.

Q Did you spend a considerable period of time doing work on the trucks?

A Yes.

Q That truck repair work continued through most of '72, the first year you were there?

A Yes.

Q Did there come a time, Mr. Leonardi, when you started to do work on what we call boggies or dollys?

A Yes.

Q Could you tell us when that was?

A Well, the first year I was there we started working on them and then --

Q Which would be 1972?

A '72, yes, early, yes, '72.

Q Did you do work on boggies in 1973?

A Yes.

Q Were you doing work on boggies from the beginning of that year, Mr. Leonardi?

A No, not really.

Q Can you tell us as best you recollect when you started doing work on boggies in '73?

A I believe it was in the late spring,around March or April.

Q Did you work continuously on them up to the time of your discharge?

A No, I usually use that for fill in.

Q Excuse me?

A I use that for fill in. In other words, I would get

assignments for the night and if I had any time left over I would work on the boggies.

Q Did you find time to work on the boggies from March or April?

A Sometimes no. I'm sorry.

Q From March or April to the time of your discharge?

A Yes.

Q Were there evenings when you spent a considerable period of time of your night working on boggies?

A No, not that much. I would say an average of an hour or two hours a night.

Q Did you work any days during this period of time, Mr. Leonardi, with the exception of the one day you testified to?

A I don't recall if I did or not. I may have if I -- if I wanted to go out or something like that I would switch with one of the other fellows.

JUDGE LIPTON: It would be unusual though?

THE WITNESS: Unusual, yes.

Q Mr. Leonardi, you testified that Mr. Frances approximately one week before the discharge of Mr. DiSomma and Mr. Winfield spoke to you about a union?

A Yes.

Q Did he talk to you specifically about any one particular union or was any one particular union mentioned?

A You mean the first time he mentioned it to me?

Q That is correct.

A Yes.

JUDGE LIPTON: What is the answer?

THE WITNESS: Yes.

Q What union was mentioned?

A What union did I mention?

Q No. Let us straighten that out.

Mr. Leonardi, you talked about a conversation at which a union was mentioned. Did you bring up the union or did Mr. Frances bring up the union in the conversation?

A No, he brought it up. He brought up the two unions.

Q What two unions?

A Well, he asked me what union I was working for in the bus company and I told him Amalgamated Transit 1181. Then he said something about Local 447 Machinists Union.

Q Was he the one who mentioned 447?

A Yes.

Q Was there anybody else present during this conversation?

A Yes, my brother was present.

Q You testified to a series of conversations you said

took place between yourself and Mr. Frances and yourself and Mr. Monahan during the days preceding your discharge. You recollect that?

A Yes.

Q Was anybody present at any of these conversations between yourself and Mr. Frances other than yourself and Mr. Frances?

A I don't recollect.

Q And the conversations you had with Mr. Monahan during this period of time, was there anybody present at those conversations besides yourself and Mr. Monahan?

A I can't recall any.

Q You testified that you were using the boggies as fill in work. Could you tell us what work you were doing during this period of time from March up until the time of your discharge?

A Well, they had priority work. If the pipe machinery didn't work there was 20 to 30 laborers hanging around doing nothing waiting for the pipe machinery to be fixed. They had to be set up when he changed over for different pipe, different size pipe.

That was one of them, and then the fork lifts which are very important for handling the pipe forms, they had to be repaired too, and the cement mixers upstairs had to be repaired almost two or three times a

week. The cement mixers was my job.

Q Was your brother also working on these items at this time or was he working on boggies at night?

A If I needed a hand he would give me a hand. He had other duties to do.

Q Was he working on the boggies during this period of time?

A As a fill in too.

Q You have testified that you were present at a conversation that occurred between Mr. Winfield and Mr. Frances on the date Mr. Winfield was discharged?

A Yes.

Q I believe you testified that Mr. Frances said, "We are slowing down, we don't need you."

He said this to Mr. Winfield?

A Yes.

Q Did he say anything else?

A That's all.

Q Was there any mention of any union or anything?

A No.

Q Did Mr. Winfield say anything to Mr. Frances?

A No.

Q Did anybody else or was there anybody else present at that time besides yourself and --

A I believe he gave Mr. Winfield his check.

Q Check?

A I believe my brother was there and I think Mr. Nare was nearby. I don't know if he overheard the conversation or not.

Q But to the best of your recollection there was no response from Mr. Frances when he said to Mr. DiSomma, "We don't need you, we are letting you go"?

A I didn't hear him say that to Mr. DiSomma.

Q I thought you testified that you heard Mr. Frances say, "We are slowing down, we don't need you"?

JUDGE LIPTON: Not to Mr. DiSomma, to Mr. Winfield.

MR. DONELAN: Forgive me.

Q To Mr. Winfield and you heard no response from that from anybody who was present at that time?

A No.

Q I believe you testified on the day you were discharged you had a conversation with Mr. Frances when he gave you your check?

A Yes.

Q Was there any mention of any union in that conversation?

A No.

Q Was there anybody else there besides yourself and Mr. Frances when you had this conversation?

A I don't recall if there was.

Q You have indicated that there was a request made to you about working your vacation and getting double; is that correct?

A Yes.

Q Was the reason for that, Mr. Leonardi, that they were looking for additional help for work on the boggies during that period of time?

MS. KAVE: Objection.

JUDGE LIPTON: I will sustain it. You can ask him if he knows the reason.

Q Mr. Leonardi, do you know the reason why you were asked to forego your vacation and get paid double?

A No.

Q Was any reason stated to you by anyone?

A No, they did that every year.

Q Mr. Leonardi, after your discharge did anyone ever ask you why you had been discharged?

A Did anybody ever ask me?

Q Yes, did anyone --

JUDGE LIPTON: It is too broad. You don't have to answer that.

Pin it down. Anybody could be his grandmother too.

Q Mr. Leonardi, did you ever have any discussions with anyone from the New York State Unemployment --

MS. KAVE: Objection.

Q (Continuing) As to --

JUDGE LIPTON: Please don't persist in this. You already had a ruling. If you have particular evidence indicating testimony, official documents I will rule at that time on admissibility, but I will not permit you to go on a fishing expedition.

MR. DONELAN: I have no further questions.

JUDGE LIPTON: Redirect?

REDIRECT EXAMINATION

Q (By Ms. Kave) Mr. Leonardi, were there entire evenings when you did not work on boggies?

A What?

Q Were there ever entire evenings during the summer when you did not work on the boggies?

A Yes.

Q Could you approximate what percentage of your time during a day was spent working on the boggies?

A On the days that I did work approximately from one to two hours.

Q How many days a week did you devote time to work on the boggies?

A It is very spotty. I couldn't really pin it down to maybe two, three days a week some weeks and other weeks five days.

Q And you used to work on the boggies as your filler?

A As a fill in time, yes.

Q That was what you mean by filler, when you finished all your work?

A When I finished everything that was priority, then I would go on this.

Q So that had the least priority in your work?

A Right.

Q Did you work any overtime?

A No.

Q You never worked any overtime during the two years?

A Yes, I worked overtime for six months.

MS. KAVE: No further questions.

MR. DONELAN: No questions.

JUDGE LIPTON: The witness is excused. Thank you.

(Witness excused)

JUDGE LIPTON: We will take five minutes.

(Short recess taken)

JUDGE LIPTON: On the record.

Ms. Kave?

MS. KAVE: Peter Leonardi.

Whereupon,

PETER LEONARDI

having been sworn by Judge Lipton, took the stand and testified as follows:

Q Mr. Leonardi, would you please state your address

for the record?

A 18 West Avenue, Bayshore.

Q Mr. Leonardi, how long have you worked for Clearview?

A About a year and a month.

Q What type of work were you doing for Clearview?

A I was maintenance mechanic and helper. Well, maintenance helper.

Q What hours did you work?

A I worked from 4 to 12.

Q Five days a week?

A Yes.

Q Who hired you for the job?

A Dave Frances.

Q At the time when Mr. Frances hired you what was your salary?

A My salary was $4 an hour.

Q When did you receive your increase?

A About two months later I received a 20 cents raise an hour.

Q When Mr. Frances hired you did he mention anything to you about labor organization representing any of the employees at Clearview?

A No, he did not.

Q Did you ever ask Mr.Frances about any unions

representing employees at the company?

A No.

Q Did you ever speak to any of the other maintenance employees about a union?

A Yes, we talked about it.

After I was there a while and we just talked about it, about bringing a union in.

Q Who did you speak to about it?

A Usually John Winfield and my brother would talk about it.

Q Did you ever speak to Mr. Nare about it?

A We did not work the same hours so I had very little chance to talk to him at all.

Q Did anybody ever approach you about Local 447?

A You mean a representative?

Q Yes.

A Yes, Lenny Rizzo did.

Q Was that when you were approached by Lenny Rizzo, was that the first time you had ever heard of Local 447?

A Yes.

Q Mr. Rizzo came over to you?

A No, Earl Nare brought Mr. Rizzo to the plant one night to talk about the union.

Q Mr. Nare introduced you to Mr. Rizzo?

A Yes.

Q Who else was present?

A John Winfield and my brother.

Q Can you remember the date you met Mr. Rizzo?

A I believe it was the first week in June.

Q The first week in June?

A I'm sorry, July.

Q Did you hear what Mr. Rizzo said?

A Just for, you know, he just introduced himself and then Joseph Herban who lives on the property came around and since it was about the union we didn't want him to know about it.

I took him off to the side, you know, while they discussed the union, you know, for a few minutes. Then they left the premises and went across the street and I went back to work.

Q So you and Mr. Herban were not standing with Mr. Rizzo?

A No.

Q You didn't hear anything that Mr. Rizzo said to the men?

A No.

Q Did Mr. Herban ask you who the man was with the men?

A Yes, he did and I told him he was Earl's cousin.

Q Did any of the man indicate to you what Mr. Rizzo had said?

A Yes, later on that night when my brother came back to work, which was a bout a half-hour or so, he told me what Mr. Rizzo had said about what the benefits were, and he gave me a card and he told me to hang on to it, you know, until we were ready to sign.

Q Did you sign the card?

A Yes, I did.

Q Approximately how long did you hold the card before you signed it?

A A couple of days.

Q After you signed the card did you give it to anyone?

A Yes, I gave it back to my brother.

Q What was the next thing you heard about the card?

A Well, when me and my brother used to come in at night at four o'clock he went and asked Earl what he had done with the cards and Earl told him he had --

JUDGE LIPTON: Never mind about the hearsay.

Q Did Earl ever speak to you directly about the cards?

A Yes, to me and my brother, came and told us that he had sent the cards to Mr. Rizzo.

Q Do you know the date Mr. Nare indicated that he had sent the cards out to Mr. Rizzo?

A I think it was the next week.

Q After you signed?

A Yes.

Q Up until the time when Mr. Rizzo came down to the plant and Mr. Nare had told you that he had sent the cards to Mr. Rizzo, did Mr. Frances ever mention the union to you?

A No, he did not.

Q Did Mr. Monahan ever mention the union to you?

A No.

Q Did any of the supervisory or management personnel mention the union to you?

A No.

Q After Mr. Nare told you that he had sent the cards out to the union, after that time did Mr. Frances ever mention the union to you?

A Yes, he did.

Q Can you remember the first occasion, the date of the first occasion that he mentioned the union?

A It was in the -- about one week to ten days after Earl Nare said he had sent the cards in.

Q Can you give me any idea what date that was?

A Around the 20th of July.

Q What did Mr. Frances say to you about the union?

A He didn't talk to me directly.

When me and my brother would come in to work at four o'clock we'd go up to the office for our orders for the night and on that occasion he asked my brother what

union he was in when he was working with the bus company.

My brother told him and then he asked my brother if it had anything to do with the Machinists Union.

Q . Did you hear Mr. Frances say this to your brother?

A Yes.

Q Did Mr. Frances say anything to you directly about the union?

A No.

Q On any other occasion other than this first occasion did Mr. Frances ever say anything to you directly about the union?

A Never to me directly. When me and my brother used to come in for our orders for the day, until the day we were laid off he would ask us daily while of us together, about the union, you know.

JUDGE LIPTON: What did he say?

THE WITNESS: He would ask us that -- he would ask us who started the union. In other words, who brought the representative down.

He wanted to know if he -- he wanted to know who started the union, you know, who brought the representative to, you know, to represent us.

And he told us the union would do us no good, that it would only screw ourselves up.

That went on until the day we got laid off.

Q Every night?

A Every night.

Q Can you give me some idea of what period of time this was? Was this a week?

A This was about a little more than two weeks after the first questions started.

Q But he never spoke to you directly?

A No.

JUDGE LIPTON: While you were there, you were just there with your brother?

THE WITNESS: Yes.

JUDGE LIPTON: Wasn't Mr. Frances addressing both of you?

THE WITNESS: Yes, but I never said anything.

Q Did your brother ever respond to Mr. Frances' questions?

A Yes, he did.

Q What did he say to Mr. Frances?

A Oh, he'd say that we have to protect ourselves, you know, because you are not getting any younger.

Q Did he ever indicate to Mr. Frances who had initially contacted the union?

A No, he did not.

Q Did Mr. Monahan ever question you about the union?

A No, he did not.

Q When you and your brother were questioned about the union it was just the three of you present; is that correct?

A Yes.

Q Where would Mr. Frances question you about the union?

A In his office.

Q Where is his office located?

A In the front of the plant.

Q Is there anyone else that works on the night shift besides you and your brother?

A No.

Q You are the only two employees at Clearview that work on the night shift?

A Yes.

Q How did you find out that Mr. DiSomma and Mr. Winfield had been discharged?

A Me and my brother came in that day for our orders.

Dave Frances said, "Come with me, I have something to show you", and we went to the back of the plant.

He took an envelope out of his pocket and says, "Here, I have one for John" and he says, "Where is Sal?" And Sal was in an alcove adjacent to the building.

He says, "I have one for Sal', and then he said -- no, John, John said -- I heard John -- I heard -- overheard

John say that.

JUDGE LIPTON: John?

THE WITNESS: Winfield, that he was laid off.

Q What did you overhear John say?

A That he was laid off.

Q Did you hear what Frances said to the men when he gave them a check?

A No, I did not.

Q After Frances gave the two men their checks did he speak to you at all about why they were laid off?

A No.

Q Did Mr. Monahan speak to you at all after the two men were laid off?

A No.

Q Who else was present when John Winfield and Salvatore DiSomma were laid off?

A My brother Louis and Thomas Monahan and some of the laborers. I don't know their names.

Q When weryou laid off from the company?

A I was laid off August 2nd.

Q Did anything happen between the time that Mr. DiSomma and Mr. Winfield were laid off and you were laid off, that week? Did Frances ask you about the union during that week?

A Yes, he did.

Q Did Monahan?

A No.

Q What happened on August 1st?

A August 1st we came to work normally at four o'clock and I was working in the back of the plant.

About 5:30, 6 o'clock Dave Frances came to me and told me to come in at 9 o'clock the next morning.

Q Was that unusual for Mr. Frances to ask you to come in early in the morning?

A Yes, because the type of work I did required me to work at night.

Q Did you ask Mr. Frances why you had to come in in the morning?

A No, I did not.

Q Did Mr. Frances give you any reason why he was asking you to come in early the next day?

A No.

Q Did you come in early on August the 2nd?

A Yes, 9 o'clock.

Q Did you work a full day on August the 2nd?

A 'Til about two o'clock in the afternoon.

Q What happened at two o'clock in the afternoon?

A I was working in the back and Dave Frances came up to me and he handed me a couple of checks and that is it.

Q When you say he handed you a couple of checks, how

many checks did you receive from Mr. Frances?

A This was a Thursday, so I received my normal pay check. I received two checks.

No, one check from my vacation pay and I received a check for the week I was working up to Thursday.

Q Who were your checks signed by?

A I believe they were signed by Vinnie DeLillo.

Q Who is Mr. DeLillo?

A He is one of the owners.

Q Does he sign all the checks?

A As far as I know he does.

Q Did any of the checks have anything unusual on them?

A Well, the pink checks, one was for vacation and the other one said laid off on it.

Q At the time Mr. Frances gave you the checks did he state any reason why you were being laid off?

A No, he did not.

Q Did you ask him why you were being laid off?

A No.

Q After he gave you the checks did you have any further conversation with Mr. Frances?

A Yes, I did. The conversation with him and Thomas Monahan.

Q When did that take place?

A This is while I was packing my tools up.

Q Where?

A In the back of the shop.

Q Was there anyone else present?

A Not that I remember.

Q Could you relate to us this conversation?

A As I was packing my tools up Dave Frances and Thomas Monahan came in the tool shed and he said, "I'm sorry to see you go, but there is nothing I can do, it was out of my hands."

Q Did you say anything to this?

A Not that I remember.

Q Since then have you had any contacts with Mr. Frances and Mr. Monahan?

A No.

Q So to this day you have never been told why you were laid off?

A No.

Q Did Mr. Frances ever complain about your work?

A Well, he did because when I was first hired my main job was to grease the machines, the trucks, the fork lifts, payloader, and to clean them and that was my main duty.

For the first few weeks that is all I did. Then, after the work started piling up because at the time I was working with John Winfield at night. A lot of jobs

required two men to work so I could never really keep up with the machines.

In other words, so much work at night that it was impossible and I told him that and he knew it, that you couldn't really keep up with the machines, you know, with the greasing and cleaning of them.

Q Did he ever offer to get you a helper?

A No.

Q You just did what you could?

A Yes.

Q During the week prior to your discharge did Frances ever complain to you that you were slowing down on the job, that you should hurry up?

A No.

Q Did Monahan ever?

A No.

Q Did you work on the boggies?

A Yes, I did.

Q Did you spend a large percentage of your time on them?

A Well, I tried to keep the machines, grease the machines, so I tried to put in about four hours a day on them.

Q Did there appear to be less work at the time when you were discharged?

A No, the board was full of work to do.

Q When were you supposed to take your vacation? You mentioned a vacation check.

A I never put down when I wanted my vacation.

Q So there was no definite vacation?

A No.

MS. KAVE: No further questions.

MR. DONELAN: Just one moment, please.

CROSS EXAMINATION

Q (By Mr. Donelan) Mr. Leonardi, you testified you came in one evening and Mr. Frances asked you to go with him and he took two envelopes out and said, "I have one for John and one for Sal"?

A Yes.

MS. KAVE: Wait.

JUDGE LIPTON: You take a risk when you paraphrase the evidence. You can ask him simply what Mr. Frances said and did. That is already in the record.

Q At the time Mr. Frances asked you to go with him on that particular evening which I believe was late in the afternoon when you came in for work, is that correct?

A Yes.

Q Did Mr. Frances say anything to either Mr. Winfield or Mr. DiCorma about any union?

A No, he did not.

Q In your presence?

A In my presence? After he gave John and Sal their check he told Earl Nare to see what their union could do for them now.

Q Were you present when he said this?

A Yes.

Q Did he mention any specific union?

A No, he didn't.

Q When he took out the envelopes for Mr. Winfield and Mr. DiSomma did he mention anything about any union?

A No.

Q Were you there when he handed these envelopes to Mr. DiSomma and Mr. Winfield?

A Well, it was one envelope and the checks were inside that.

Q Did you see him physically hand the check to either Mr. Winfield or Mr. DiSomma?

A Yes, to Mr. Winfield.

Q There was no mention of any union when he handed him the check?

A No.

Q Did Mr. Winfield ask Mr. Frances why he was being let go?

A I don't recall.

Q Did you hear any conversation between Mr. Frances and

Mr. DiSomma that evening?

A No.

Q At the time you were let go, Mr. Leonardi, am I correct in your testimony that there was nothing said by Mr. Frances to you as to why you were being let go?

A No.

Q You never questioned or never asked Mr. Frances?

A No, I didn't.

Q Didn't it seem rather strange to you that you were being let go and you didn't inquire of any reason?

MS. KAVE: Objection.

JUDGE LIPTON: Sustained.

Q Mr. Leonardi,you indicated that you were working, trying to get in, I believe you said to the effect trying to get in four hours a day work on the boggies; is that correct?

A Yes.

Q Were you successful in getting in four hours a day on the boggies?

A Most of the time.

Q Was that five nights a week?

A Not all the time, no.

Q When did you first start to work on boggies, Mr. Leonardi?

A I'm not sure of the date but it was about maybe

three months before that we started working on the boggies.

JUDGE LIPTON: What part of the year was it?

THE WITNESS: It was in the spring, the beginning of spring.

Q Did that work on the boggies continue, Mr. Leonardi, up until about the time you were discharged?

A About two weeks prior to that.

Q Had the boggies been completed two weeks prior to your discharge?

A Well, there was still some patch-up work to do on them but they were also transmitting the beams to the city with the boggies.

Q So to the best of your knowledge the boggies, with the exception of some minor work were complete shortly prior to the time that you were discharged?

A Yes.

MR. DONELAN: I have no other questions.

REDIRECT EXAMINATION

Q (By Ms. Kave) Mr. Leonardi, what work did you do for eight hours a day before you started working on the boggies?

A To grease the machines, the fork lifts, the payloader and the trucks, to change the oil in them, tighten any loose connections on them.

They have conveyor belts for the cement, I had to grease them and any other piece of machinery that had a grease fitting on it, I had to grease.

Q Did you work a full four hours a week before you started working on the boggies?

A Yes.

Q Did this work exist at the time when you were discharged?

A Yes.

Q Were there any maintenance men or men doing the same type of work who were hired after you were?

A Not to grease. I was the only one doing that.

Q So there was no one that came within the maintenance category of your work?

A Yes, they had hired two men, Artie Carbone and Mr. Gomez to do the welding.

Q Do you know how long -- well, how long before you were discharged was Artie Carbone on it?

A About two months.

Q How long before your discharge was the other gentleman, I don't rerember his name?

A Mr. Gomez.

Q Mr. Gomez.

A About maybe five weeks.

Q At the time when you were discharged were Artie

Carbone and Mr. Gomez still working for the company?

A Yes, they were.

MS. KAVE: No further questions.

MR. DONELAN: No further questions.

JUDGE LIPTON: The witness is excused.

(Witness excused)

JUDGE LIPTON: Call your next witness.

MS. KAVE: Mr. John Winfield.

Whereupon,

JOHN WINFIELD

having been sworn by Judge Lipton, took the stand and testified as follows:

DIRECT EXAMINATION

Q (By Ms. Kave) Mr. Winfield, would you please state your address for the record?

A 835-10B Broadway Avenue, Holbrook, Long Island.

Q Mr. Winfield, how long were you employed by Clearview Concrete?

A Just about two years.

Q Who hired you for the job?

A Mr. Russo.

Q What type of work were you doing?

A Mechanic on fork lifts, trucks, payloaders, trailers, plant maintenance. Some shop welding. Regular work like that.

Q So you generally repaired anything that broke down?

A Yes. Also I ran a payloader in the afternoon from four to six.

Q You are going to have to explain to me what you mean by a payloader.

A Well, when they were making materials late, such as pouring beams across the street, the regular payloader operator would go home at four o'clock so I would have to be there to charge up the hoppers, put materials into the hoppers, you know, gravel, sand and so on.

Q Was this a regular job that you did every day?

A Yes.

Q Who supervised you on your job?

A Dave Frances.

A At the time when you were hired by Mr. Russo do you know what Mr. Russo's position with the company was?

A Not really. I think he is an officer of the company.

Q At the time when you were hired by Mr. Russo did he mention any labor organization representing the employees of the company?

A No.

Q Did you ask him about it?

A No, I did not.

Q Prior to June of 1973 did you ever speak to Dave

Frances about any labor organization representing the employees?

A Yes, one time I asked him about 138.

Q What did you ask him about 138?

A Well, I asked him -- this is when I started running the payloader in the late afternoon, after the regular operator went home.

Q They are the Operating Engineers Local?

A Yes. I asked him how about getting in 138 seeing as I'm operating the payloader in the afternoons.

He says, "If you don't like it", he says, "pick up your pay and go home."

Q Indicating that you couldn't become a member of Local 138?

A I guess.

Q You never got a clearcut answer from him?

A Yes, just pick up your pay and go home if you don't like it.

Q Did you ever speak to Thomas Monahan about labor organizations prior to December of 1973?

A No, not joining any because as far as I know he had nothing to do with --

JUDGE LIPTON: The answer is no.

THE WITNESS: No.

Q Did you ever speak to any of the other maintenance

ren about joining a union?

A Yes, I spoke to Earl Nare about it.

Q When was the first time you can remember speaking to Mr. Nare about joining a union?

A Oh, around the beginning of the spring. There was nothing definite.

Q Did you and Mr. Nare ever discuss contacting a union?

A Yes, Earl said he belonged to 447 one time or he had something to do with them and he said they were a pretty good union and it would be a good idea to contact them because he knew they were in -- doing some prestress work, concrete work.

Q Did you ever meet with a representative from Local 447?

A Yes, I did.

Q When did you meet with this representative?

A Oh, around the beginning of July.

Q What was the representative's name?

A Lenny Rizzo.

Q Where did you meet with Mr. Rizzo?

A I met him back at the shop at Clearview.

JUDGE LIPTON: You don't have to go through some of those details about meeting there and then going across the street. Those are irrelevant. In fact, the whole issue has been pretty well covered. Get to the high points of the

pre-organizational activity.

Q Mr. Winfield, did you ever sign a card for Local 447?

A Yes, I did.

Q What did you do with it after you signed it?

A Gave the card to Mr. Nare.

Q Can you recall around what date it was that you gave the card to Mr. Nare?

A About the 6th or 7th.

Q Was it right after you met with Mr. Rizzo?

A Yes.

Q What was the next thing you heard about the card?

A Earl said he sent them in and --

Q Can you recall when it was that Earl said he had sent them in?

A No, I couldn't really. It was in the beginning of July.

Q Up until the time when Mr. Nare said he had sent the cards in had Mr. Frances ever asked you about a union?

A No.

Q Never spoke to you about a union?

A No.

Q Mr. Monahan ever spoke to you about a union?

A No.

Q Had any of the company officials ever spoken to you

about a union?

A No, but I did.

Q You spoke to a key official about a union?

A Well, I spoke to the laborers' shop steward on the job.

Q When did you speak with him?

JUDGE LIPTON: Why do we need any laborers' shop steward? How is the company bound in any way and how is it relevant?

Q What is the position of the laborers' shop steward at the company?

A He is the shop steward of the laborers.

Q Is he just a laborer at the company?

A I would imagine so.

Q After you gave the card to Mr. Nare did Mr. Frances ever question you about the union prior to your discharge?

A Yes.

Q Can you recall when Mr. Frances spoke to you about the union?

A About the week of the 23rd it was.

Q Of what month?

A Of July.

Q What did Mr. Frances say to you?

A I used to start at 10 in the morning so I used to have to go in and find out if anything was happening,

you know, what I had to do, any specific jobs.

He would ask who started this union, who called the representative in.

I said he said -- you mean he fell out of the sky for tea, somebodyhad to call them in.

I said it was a unanimous decision. Everybody got together and decided to get some representation.

Q Was there anyone present when Mr. Frances said this to you?

A Yes, on this occasion there was. Arty Harneyer as dispatcher. I believe Artty David was in the office at the time, and --

Q Who is Arty David?

A He is the laborer's shop steward, and I think two of the seamstress were in the office. One was Gus. He is the teamster shop steward, and I think the other one may have been Joe Meyer or Grant, I'm not sure which one it was.

JUDGE LIPTON: Who are these employees?

THE WITNESS: They are drivers.

Q Did Mr. Frances ask you about the union on more than one occasion?

A Yes, on the week of the 23rd. It was regular procedure. When he saw me he would ask me, you know, who started the union or what do you expect to benefit by it?

Q Was this more than once a day?

A No, I wouldn't say it was more than once a day.

Q Would you say it was every day from the 23rd until the day you were fired?

A Yes.

Q Did Mr. Monahan ever ask you about the union?

A No, I don't think so. He may have but I can't recall.

Q On the day you were discharged, July 26th, did you report to work as normal?

A Yes, I did.

Q What happened?

A I went through my normal day. I went in, in the office and got my orders for the day and about, I would say 3 o'clock, a quarter after 3, 3:30, Arnie David, the laborer's shop steward came walking to the back of the shop and says "Come here a minute, John", he says, "I want to ask you something."

So he takes me out on the corner and says, "What is this about this union?"

Q Was anyone else present when he said this?

A No, he called me off on the side.

He said what can be about the union? That is it. It is the union.

So shortly thereafter Dave Frances came by but he says "Here, Johnny, Ihave your check", he says.

JUDGE LITTON: Was Arnie David present?

THE WITNESS: He may have been, I don't know, I don't recall.

A (Continuing) He said, "Here, Johnny, here's your check. We don't need you anymore."

Q Was anyone else present when Dave Frances gave you your check?

A Yes, Louie Leonardi was there. I think Pete was there. Earl was somewhere around but I don't think he was in earshot.

I'm pretty sure there were a couple of laberers. Who they were I don't recall.

Q He said, "We don't need you any more?" Did he state any more of a reason why he was letting you go?

A Yes, he said "We are slowing down."

As a matter of fact, he turned to everybody that was there, I can't recall who it was, and he said "There, you all heard me tell him that we are slowing down. We don't need him any more."

Q Did you say anything in response?

A Yes, I thought he was joking, and apparently he wasn't, so I packed up my tools.

Q I asked you if you said something in response. Did you say "Were you joking?"

A Yes, I imagine I said something to him, that I --

MR. DONELAN: I move to strike.

JUDGE LIPTON: I may be stricken. Just testify to what you recall.

Q Can you recall saying anything to Mr. Frances in response when he told you it was slow?

A No, I can't say that I do at this time.

Q Did any of the other men who were standing around say anything to Frances when he made that announcement?

A No.

Q Did Mr. Frances say anything to any of the other men?

A Just that "You all heard me tell him we don't need him any more because we are slowing down".

And he also said I have a check for you.

He says "I have one here for Sal."

Q Were you present when he gave the check to Sal?

A No, I wasn't. I was going to find Earl.

Q Did you find Earl?

A Yes, he was up ahead a little bit working on a machine.

Q What did you tell Earl?

A I told Earl I got laid off.

Q What did Earl respond?

A Earl came to the back and Dave said "See, see what your union will do for you now", he said, "Call your shop steward" or "Call your delegate."

Yes, "Call your delegate", so Earl went and tried to call but couldn't get an outside line or a New York line,

or whatever.

Q Meanwhile what did you do after you got your check and you got Earl?

A I started packing up my tools. I went -- after I packed up my tools and put them in the car I went back into the office because I had some keys to various tool cribs and so on and so forth.

I had some rain gear I had just gotten so I gave the rain gear back and gave the keys and they shook my hand and says so long, it was nice working with you. That is it.

He says "You are not going to take this lying down I'm sure."

I says "Well, we'll see what happens then."

Q Was anyone else present when you went back and shook Dave's hand?

A I don't think so.

Q You mentioned that you had just got new rain gear. Had you gotten it very recently?

A Yes, I did.

Q When did you get it, do you remember?

A I think it was that week or the week before.

MRS. KAVE: I have no further questions.

Wait, I have one more.

Q Had Frances complained to you at all about your work prior to being laid off?

A No.

Q Had he indicated to you that they were getting slow, that you might be laid off in the future?

A No, he didn't.

MRS. KAVE: No further questions.

CROSS EXAMINATION

Q (Mr. Donelan) Mr. Winfield, you indicated that you ran a payloader in the afternoons. Was that on the days that they poured prestress late?

A Yes.

Q Was that every day?

A Just about every day.

Q Every day from the day that you started working there to the date of your termination?

A No.

Q Will you tell us how often it was, Mr. Winfield?

A Every day they poured late, it was pretty regular.

Q Was it five days a week?

A Yes, five days a week.

Q Was it four weeks a month?

A I would imagine so.

Q 12 months a year?

A I wouldn't say every day I had to run the payloader but pretty nearly every day.

Q Was this for the entire period of time that you worked

there?

A No. This started in, I would say, the last five, six months, maybe four months.

Q At the time you were working on the payloader were you working on the boggies?

A Yes, I did some work on them.

Q Did you do some work on them every day during that period, that five or six months preceding your discharge?

A No, not every day, but there were days I had other things to do.

Q When did you start working on the boggies, Mr. Winfield?

A About the spring of the year.

Q Did that work continue up until about the time you were let go?

A Yes, just about.

Q To the best of your knowledge had the work on the boggies been completed in or about the end of July of 1973?

A The initial work of building them, yes.

Q Were they using them on the road?

A Yes, they were using them.

Q Did they start using them on the road around the end of July of 1973?

A Yes, they had an awful lot of road calls then.

Q You indicated there was a time that Mr. Frances spoke

to you after the time these carts had been given to Mr. Nare. I think you said it was around July 23rd when he first started to talk to you about the union?

A It was around, sometime during that week. I couldn't be specific.

Q I think you indicated that at one time he asked you who started the union or who called a representative in and you testified that there were other people present at that time, a Mr. Haremeyer, a Mr. David.

A Yes.

Q Were these people laborers or employees in the plant or truck drivers?

A They were -- this was in the office, I had gone into the office, I guess.

Well, Artie Haremeyer I guess is a dispatcher, I believe.

Artie David, I think he was in there. He is like the laborer's shop steward.

Q You don't know if any of these people are in the management of the company, do you?

A No, I don't know.

Q At the time Mr. Frances came to you in July 26th you testified he said to you "I have your check, we don't need you", words to that effect?

A Yes.

Q Did you ask Mr. Frances at that time why you were being let go?

A I don't believe I did.

Q But he said to you that "We are slowing down and don't need you any more"; is that correct?

A Yes, that is what he said to me.

MR. DONELAN: I don't have any other questions.

REDIRECT EXAMINATION

Q (By MRs. Kave.) Mr. Winfield, did you work any overtime while you worked for Clearview?

A Yes, occasionally.

Q Prior to doing work on the boggies you were doing general maintanance work?

A Yes, I was.

Q Did you have 8 hours of work a day?

A Yes, I did.

Q Were you wver laid off for lack of work?

A No, I was not.

Q You said that the work on the boggies basically finsished a week before you were discharged. What type of work were you doing the week when you were discharged?

A Well, it was not only the week I was discharged. It was the week before and the week before that.

I was working on forklifts, trucks, straightening out the lights on the trucks. I was taking a payloader apart

in the other shop.

I think we just starting to do a valve job on one of the bigger machines.

Q At the time when you were discharged were you in the middle of doing any jobs?

A Yes, I was.

I was, like I say, I was in process of rebuilding a transmission on one payloader and I was involved in a head job on a forklift.

I had another forklift I had to put a slave cylinder in and various things. I mean there was only something coming up.

Q You mean jobs waiting to be done?

A Yes.

Q How long does it take to rebuild a transmission?

A On that particular payloader it was a pretty big job. You would have to just about take the whole machine apart to get it out.

Q Could you give me some idea how long that would take, how many hours work that is?

A I would say the way we could work on it it would be another three weeks before it was finished because you can never finish one job before you had to leave it to do something else.

Q Did the company have any other employees who did

mechanical work, the same type as you did?

A Yes, they did.

Q Who?

A They had Earl Nare, George Bartoli, Louie Leonardi, Pete Leonardi.

Q Were there any employees other than the men here in the room, were there any employees that you know of that can do mechanical maintenance that left the company?

A Well, that guy Arty, used to change flats once in awhile. I don't know how he was as a mechanic.

Q Did you ever see him do mechanical work?

A Yes. Itis hard to say because I usually did my work. I didn't nose around too much.

JUDGE LIPTON: Who is Arty? What is his second name?

THE WITNESS: I believe his name is Carbone, I don't know.

JUDGE LIPTON: Recently hired?

THE WITNESS: He was hired I would say six months before I was let go.

JUDGE LIPTON: Was he working as a maintenance mechanic?

THE WITNESS: He was a welder, plant maintenance.

Q Do you know if the company has hired any maintenance mechanics since you left?

A No, I would not.

MRS. HAVE: No further questions.

MR. DONOLAN: No further questions.

JUDGE LIPTON: The witness is excused.

(Witness excused.)

JUDGE LIPTON: You have one more witness?

MRS. KAVE: Yes, Your Honor.

JUDGE LIPTON: That would be Mr. DiSomma?

MRS. KAVE: That is correct.

JUDGE LIPTON: Do you intend to get this letter in? That is the letter you subpoenaed?

MRS. KAVE: Yes, I do.

JUDGE LIPTON: How are you going to get it in?

Since it was mentioned and there is some question as to the date of the receipt, although counsel said it was received.

MRS. KAVE: I think they received it in --

JUDGE LIPTON: I would want that in. If it is necessary to call Mr. Rizzo, unless you can get a stipulation on the date of the receipt, whoever mailed it, testify to the mailing.

MRS. KAVE: All right. I will try and contact Mr. Rizzo.

JUDGE LIPTON: You may consult counsel and reach an agreement.

You have one more witness and that is Mr. DiSomma. Mr. DiSomma will testify on the same lines?

MRS. KAVE: Yes, Your Honor. Let me just check.

JUDGE LIPTON: We will take a short recess in a moment.

Are you prepared this evening, Mr. Donelan, to go forward?

MR. DONELAN: No, I am not, your Honor.

JUDGE LIPTON: All right, we will take a short recess.

(Short recess taken.)

JUDGE LIPTON: On the record.

MRS. KAVE: Mr. Salbatore DiSomma, please.

SALVATORE DI SOMMA,

having been sworn by Judge Lipton took the stand and testified as follows:

DIRECT EXAMINATION

Q (By Mrs. Kave) Mr. DiSomma, would you please state your address for the record?

A The address if 25 Victoria Road, North Babylon, that is Long Island.

Q Mr. DiSomma, how long were you working for Clearview Concrete?

A I would say about a year.

Q Who hired you for the job?

A Dave Frances.

Q Who is you supervisor on the job?

A David Frances.

Q What type of work were you doing at Clearview?

A I was strictly a welder.

Q You do no maintanance mechanical work whatsoever?

A I was hired as a welder.

Q Were there any other welders working for Clearview at the time you were there?

A We had a fellow by the name of Arty Carbone who was hired by -- about five months before I was laid off and another fellow by the name of Gomez, a Portuguese fellow. He couldn't speak English. I think he was a citizen of Portugal.

He was a third or fourth class welder. In other words I broke him into the welding.

Q Did he know anything about welding at the time when he was hired?

A He knew a little bit but he wasn't too good because most of the things that he did weld they weren't first class, so we had to go over most of hiw work.

Q What class welder were you?

A Well, I was always considered a first class welder.

JUDGE LIPTON: When was Mr. Gomez hired?

THE WITNESS: Gomez was hired I would say about during the time we had the boggies to do.

He was hired two months before I was laid off, about that time, two or three months.

Q At the time whey you were laid off was Mr. Gomez still working for the company?

A As far as I know he was.

Q How much were you earning when you were laid off, an hour?

A At the time I was laid off I was making $4.70 an hour.

Q Was that your initial salary when you started working for the company?

A No, I started with 4.50 and they raised me 20¢ since that time.

Q At the time when you were hired by Mr. Frances for the job did he mention any labor organization representing maintenance and mechanics and welders at the company?

A Never mentioned anything about unions.

Q Did you ever mention unions to the other employees?

A Never did.

Q When was the first time that the subject of unions came up?

A Around July the 6th, Mr. Leonardi, that is Louis, came to George and I and he handed us a couple of cards saying would we fill these cards out for Local 447 and we would be protected and nobody would be laid off, plus we would be covered by a union.

That is what Mr. Leonardi said to me.

Q That was the first time?

A The first time I ever seen these union cards.

Q What time of day did he come to you?

A It was toward the evening because him and his brother used to work at night, so they come over to George and I. I think it was around 4, 5 o'clock, around that time, gave us a card. I mean Mr. Leonardi, Arty gave me a card, gave George one and asked us to fill them out.

Q Was anyone else present besides the three of you?

A No, just George and I and Louis.

Q Where was this?

A It was in the shop area, near the locker room.

Q So did you ever meet Mr. Rizzo from the union?

A No, I never met him.

Q Did you sign the card immediately?

A No, I didn't want to sign it unless George signed his first because he is the fellow that brought me into to be hired and I wasn't going to do anything to jeopordize George's job.

JUDGE LIPTON: Did you sign it?

THE WITNESS: No.

Q Did you eventually sign the car for the union?

A I signed the same day that George signed his. That was about two or three days later, maybe four days later.

Q Two or three days after Louis gave it to you?

A That's right.

Q What did you do with the card when you signed it?

A Gave it to Louie Leonardi the same time George gave his to him.

Q Did Mr. Leonardi ever tell you what he did with the cards?

A That is all I remember. We gave him the cards and surmised he handed them into the union officials.

MR. DONELAN: Objection.

JUDGE LIPTON: Never mind what you surmised.

Q When was the next time you heard about the cards or the union?

A Well, around July the 25th Mr. Atry Davids came over to me and asked us if we had signed up with some union.

So I said yes, the fellows had signed cards for Local 447.

So he told me, he said it had better be a good union, he says, because "You fellows are going to need some kind of protection".

JUDGE LIPTON: Why do we need this?

THE WITNESS: I don't know, but --

JUDGE LIPTON: Hold it. Why do we have to get into Arty Davis? Who is he?

MRS. KAYE: Your Honor, I really asked the witness --

JUDGE LIPTON: He is your witness. You have to control

him. We don't want to get any extraneous stuff that is not binding on the company. We don't know who he is.

There was some mention before that he was a steward and I will not draw any inferences from the fact that there are -- that Arty Davis spoke to this witness.

MRS. KAVE: Strike that answer.

Q Did Mr. Frances ever mention a union to you after you give your card to Mr. Leonardi?

A No, only on the day I was fired.

Q Did Mr. Monahan prior to the day you were fired ever ask you about the union?

A No.

Q Did any other supervisory personnel of the company ever ask you?

A No supervisors.

Q On the day that you were discharged, July 26th, did you report to work as normal?

A Yes, ma'am, as normal.

Q Did you work a full day?

A I worked a full day, yes, I worked a full day. That is the question, right?

Q When you were informed that you were being laid off?

A The afternoon, about 2, 3 in the afternoon Dave Frances and Monahan, the two of them came over to me and they gave me my vacation money plus my salary for the week and that

is then Dave Frances told me "He won't need you any more, it is getting slow", that is what he told me, the exact words.

Q Did you respond?

A Well, it was obvious. I didn't have to respond.

Q Did you think that he was serious?

A Well, in a way I thought he was joking because he was --

JUDGE LIPTON: Just a moment. Don't testify to what you thought. Just testify to what you said.

THE WITNESS: No, I didn't tell him anything.

Q Did Mr. Frances, the day that you were discharged, did he mention a union to you at all?

A Well -- what was that again?

Q The day that you were discharged did Mr. Frances mention any union to you at all?

A The day I was discharged? No, he didn't mention anything about a union to me, but he did ask if I knew who had started this business.

So I was a little irritated I told him I didn't know and if I did I wouldn't tell him.

Q Was this before you told him you were discharged?

A This was before I had my pay, that's right.

Q What exactly did he say to you? Did he use this expression, who started this business?

A He asked me who started this union business and that is when I responded in the manner I did.

Q That was the only time he asked you?

A That was the only time.

JUDGE LIPTON: What was the date of that?

THE WITNESS: That was the 26th, the same day I was laid off because before he gave me my check.

JUDGE LIPTON: Before he gave you your check?

THE WITNESS: Yes, that's right.

JUDGE LIPTON: Before you knew you were discharged or after?

THE WITNESS: Well, after I knew I was discharged, when he gave me my check. That is about an hour or two later.

JUDGE LIPTON: The conversation took place after you got your check?

THE WITNESS: No, no, that was before.

JUDGE LIPTON: At the time of this conversation you did not know that you were going to be discharged?

THE WITNESS: That's right.

Q How did you find out that Mr. Winfield had also been discharged on the same day?

A Well, I was working again. I was welding, doing some pallets.

Q This is after you got your check?

A Yes, after I got my check. I was doing some work and Louie came over to me and he said, "Did you get your check too, Sal?"

I said yes.

He said, "Well, John got his too. The two of you are laid off", you know, so that is when I realized he was serious because he really meant it. That is when I realized I was laid off for good.

Q Did you go to speak to Frances at all after you found out it was serious?

A No, I didn't go back to Frances any more excent maybe about after I went to see George.

No, I'm sorry. I went back to Frances and I asked him, "Dave, does this mean I won't come back after my vacation?"

Of course I had taken a week's vacation.

He said, "That's right, Sal, you're through."

This was after I had my pay and after I spoke to Louis because then I realized he really meant what he said that I was finished.

Q Did he say anything else to you?

A No, nothing else. He shook my hand and that was it. We parted good friends.

Q Did you then leave the company's premises?

A No, I was still walking around. When I went to the cooler to get a drink and I heard Monahan say, "Well, there's two this week, there will be two next week".

Q Was he speaking to anyone in particular?

A There were a few fellows around there. In fact, there was Joe, the payloader operator there and he surely heard the conversation.

In fact everybody did.

Q Can you remember anyone else who was standing there when he said this?

A I didn't pay that much mind to it but I know Joe was there.

Q Did you repeat this to any of the men that you heard this?

A I went over to Louie and I told him, I says, "Louie, you are going to be next." That is next week.

This was on the 26th that I told him.

Q After you spoke to Louie did you still go back to work or was this the end of the day?

A No, I took a walk over to see George. He had come back

on his vacation which was on a Thursday. Surprised to see him but I seen him come in the yard before and he was working on his car so I said, "George, what's the deal?"

He said, "Don't worry about it, I will talk to Dave myself Monday and we will see what is going on" because him and Dave were pretty close.

Q Were you planning to go on your vacation the following week?

A Oh, I had taken a week's vacation.

Q Coming up or had you just finished?

A No, it was coming up. In other words, Thursday I was laid off. I had received my check. My vacation would start the following Monday.

Q At the time when you wrote down you were going to take your vacation did anybody indicate to you that you were going to be laid off, that work was slow?

A No, I didn't think I would be laid off.

Q Prior to the actual day you were laid off had anyone from management in the company indicated that work was getting slow?

A No. In fact, I only took a week because they claimed they had plenty of work for me so I told them well, all right, I will take a week off and I will work the other week. That is why I only took one week vacation,

but they paid me in full for the two weeks.

Q They had actually asked you to work during your vacation and they would pay you double?

A That's right.

Q Were you working overtime at all?

A I worked on an average of two to three Saturdays a week. That is with George.

Q A week?

A I'm sorry, two to three Saturdays a month because there was so much work to catch up on, especially welding, and I worked maybe one or two hours a week overtime.

But Saturdays at least two to three Saturdays a month.

Q In the month of July, the month you were discharged, did you work any Saturdays in that month?

A In the month of July? I can't really remember but I might have worked one or two weeks, I'm not really sure on that.

I would have to go back to my payroll slips.

Q Immediately prior to being laid off by Mr. Frances had he complained to you about your work in any way?

A I don't think so. He never complained to me about my work but he did complain about the other welders' work.

Q Mr. --

A Mr. Gomez.

MS. KAVE: No further questions.

CROSS EXAMINATION

Q (By Mr. Donelan) Mr. DiSomma, as you indicated that Mr. Gomez was doing welding work --

A That's right.

Q Was he doing anything other than welding work or was he working just on welding?

A Well, Dave Frances put him in my charge to do some welding. He told me to break him in so I broke him in.

I would consider him a third or fourth class welder and when I got through with him he was, I would say, about a second class welder.

Q But my question is --

A No, he did nothing else.

Q He did nothing else, just welding work?

A Just welding work.

Q For the entire period of time you saw him there, from the time Mr. Frances brought him to you to break him in on welding which you claim he did, mostly welding?

A I would give him a job and he would finish it.

Q Were you working on anything other than welding, Mr. DiSomma?

A I would say I did mostly welding or maybe burning.

Q Was some of that work on what we have called boccies,

Mr. DiSonna?

A Well, it was all welding on boggies, welding, fitting, some woodwork.

Q Do I gather from your answer that you spent a considerable amount of time working on the boggies doing welding work?

A Yes, unless something broke down that needed some heavy welding. Then they would put me on something else.

Q Did there come a time when you were not working on boggies and then started on them? Did there come a time when you started working on boggies?

A When I started?

Q Yes, did you start working on boggies from the time you came with the company?

A No. I did mostly repair work.

Q Mostly welding?

A Plenty of welding.

Q Did there come a time when you started work on boggies?

A Yes, they had a large job on box beams and these boggies had to be welded with heavy plates, widen them so the beams would fit on them, naturally this took up most of my time welding.

Q When you say most of your time would that have been from the spring of 1973 through the time you were let go?

A I can't remember but I'm sure we worked on them about three, four months.

Q Do you know if there came a time when the boggies were finished and they were being used to transport these box beams?

A Well, actually they were never finished. There was always something that would break down on them that required welding, hooks. Some of them would crack. It was always something to do on them.

Q But do you know if there came a time when they were using them on the road to transport box beams?

A Yes, they were using them.

Q You indicated on the day of your discharge that Mr. Frances didn't mention the union to you with the exception of asking you questions, something to the effect "Do you know who started this union"?

A That's right.

Q Did Mr. Monahan ever mention a union to you at all?

A I can't recall Mr. Monahan.

Q Mr. DiSomma, you indicated that you had foregone or intended to forego one of your week's vacation and work that week.

A That's right.

Q Do you know how long prior to your discharge you were asked about your vacation or asked about foregoing a

week's vacation?

A We were asked to pur our vacation schedule up on the wall as long as maybe a month or two months before our vacation. They had a board there where you could mark down.

Q Was it at that time that you were asked about foregoing the week of your vacation to work?

A Well, the reason I waited is because I was last in line for vacation. Naturally these fellows had seniority so I was one of the last to put my name up so I put one week and Dave had to okay it.

Q Do you know when this was, Mr. DiSomma?

A I can't recall.

Q Was it in June or was it in May?

A I really don't know.

Q Was it --

A Could have been around June. A month before my vacation. It was no hurry.

MR. DONELAN: I have no other questions.

REDIRECT EXAMINATION

Q (By Ms. Kave) Mr. DiSomma, what work were you doing the week that you were discharged?

A What work I was doing when?

Q The week you were discharged, the week --

A Oh, the week I was discharged I had a job which required most of my time. This is welding large pallets.

They are large steel rings. They are pretty heavy and it would take up most of my day.

Now, according to as many pallets I had I was told that was about three, four months on pallets which would require at least eight hours a day drilling and welding. That is all pallets.

JUDGE LIPTON: Who told you that?

THE WITNESS: Well, George told me and he showed me them. Monahan showed me the work that had to be done on pallets.

They were always rushing me on them and it was obvious there was enough work there to keep me busy welding for the next four months.

Q Was Mr. Gomez also working on these pallets?

A No, they would only let me do this type of work. It required special welding.

Q Do you know if the company hired another welder to do this work?

A I wouldn't know.

Q So you basically were discharged in the middle of a job, you had three or four months work left to do on the job?

A That's right.

Q After you signed up that you were going to work the week of your vacation did anyone, any supervisor

or Mr. Frances indicate to you that you wouldn't be needed to work during your vacation because there wasn't enough work?

A No, I was never told that.

Q No one ever mentioned to you that work was getting slow?

A No.

Q At the time when you got your check that was the first time that Frances had ever mentioned that work was slow?

A The first time I ever knew the place was slow. When he gave me the check and told me that.

Q In the little over a year that you were working for the company was there any other time you were laid off?

A Never.

MS. KAVE: No further questions.

MR. DONELAN: I have a few, please.

RECROSS EXAMINATION

Q (By Mr. Donelan) You indicated you were told there were three to four months work to be done on pallets and you said "George told me this".

Would you recall which George you are referring to?

A George Bartoli.

Q You also indicated that Mr. Monahan told you about work on pallets?

A That's right.

Q Did Mr. Monahan --

Q Mr. Monahan would supervise me on the pallets. He would tell me how many I should do a day. If I could do three, four a day that would be pretty good.

Q Did he tell you it was three to four months work to be done on pallets?

A He said there was enough work on that just for me, just welding, at least three, four months work in heavy welding.

Q Mr. Monahan told you that or Mr. Bartoli?

A Well, he showed me pallets. So did George. They both looked at them.

Q My question is did Mr. Monahan specifically say to you there is three or four months work for you in the yard or did that come from Mr. Bartoli?

A It came from both of them.

Q He specifically said to you there was three to four months work?

A Only on pallets, not on the other job.

Q That is all I'm talking about.

A That is what I told you, pallets.

Q Mr. Monahan said this to you?

A That's right.

MR. DONELAN: I have no further questions.

MS. KAVE: No further questions.

JUDGE LIPTON: The witness is excused. Thank you.

(Witness excused)

JUDGE LIPTON: What do you have, Ms. Kave, on the letter? Do you have anything? Are you going to call a witness?

MS. KAVE: I will have to. I believe respondent's counsel has indicated he will not stipulate as to the date although he will stipulate that the letter was received.

He will not stipulate the date it was received by the company and it would be necessary for me to get the registered receipt.

MR. DONELAN: Your Honor, forgive me, I didn't mean to interrupt you.

JUDGE LIPTON: All right. You are going to attempt to get the registered receipt?

MS. KAVE: Is that correct, did I state it correctly?

MR. DONELAN: I indicated to Ms. Kave that I would stipulate to receipt of the letter. The precise date is presently unknown. I told her I would attempt to ascertain from my clients the precise date of the receipt of that letter if it is available to save her the trouble of having to subpoena someone, if that is possible.

JUDGE LIPTON: Are you going to attempt to do that between adjournment tonight and resumption tomorrow morning?

MR. DONELAN: Yes, I will, your Honor.

JUDGE LIPTON: In the meantime you get whatever support or basis you can for this.

There is a stipulation that it was received. Just a question of the date.

MS. KAVE: That is correct.

JUDGE LIPTON: All right, we will save that until tomorrow morning and see what develops.

MR. DONELAN: Your Honor, I would like to remake my motion, your Honor, for the adjournment of the respondent's case until such time as Mr. Frances returns which would be February 28th.

JUDGE LIPTON: Well, it still seems a little ridiculous to me. I will tell you very frankly it is very holy and irrevocable that he remain there until the 28th when you had notice previously? He should have had notice previously. This thing was in the stage of preparation by you and you are keeping him out there until he returns.

Whereas, this whole trial was set up, it was prepared, he was your principal witness and it is very difficult for me to believe he was omitted from

consideration in the preparation.

I don't know what general counsel has to say about the date, February 28th.

This will incur expenses on the part of the government, my time, other time, other witnesses will have to be here for rebuttal and other things.

It is almost incomprehensible to me that this developed and I have had long experience in these things.

What is the position of the general counsel so far as a motion to adjourn, not mentioning any specific date? Do you have any remark or any position on this, Ms. Kave?

MS. KAVE: Reluctantly I will go along with it and to give respondent counsel an opportunity to properly present his case without prejudice, but I would like a date earlier than the 27th.

JUDGE LIPTON: You have other witnesses. You can't put the other witnesses on the stand tomorrow?

MR. DONELAN: Your Honor -- I'm sorry, I don't mean to interrupt you.

JUDGE LIPTON: You can put in what youhave and in the meantime I will try to determine my own availability. I can't say that I'm available the 28th.

Do you want to consider, Ms. Kave, the availability of any rebuttal witnesses, other people you might have here?

MS. KAVE: Yes.

JUDGE LIPTON: So on that basis, since you have indicated you are not ready to go forward now and it is 25 minutes to 5, we will resume tomorrow at 10 o'clock.

I will expect you to have your other witnesses available here. They have already been called. Other people have been alerted and we will take what we can tomorrow and then will give you an answer on this motion to adjourn or postpone.

MR. DONELAN: Thank you.

JUDGE LIPTON: The hearing will recess until 10 o'clock tomorrow.

(Whereupon and at 4:35 o'clock P. M., the hearing was adjourned)

OFFICIAL REPORT OF PROCEEDINGS

BEFORE THE

National Labor Relations Board

DOCKET NO. 29-CA-3560

IN THE MATTER OF:

CLEARVIEW CONCRETE PIPE CORPORATION

PLACE: Brooklyn, New York

DATE: February 20, 1974

PAGES: 166 - 233

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BEFORE THE NATIONAL LABOR RELATIONS BOARD

Twenty-Ninth Region

- x

In the Matter of: :

CLEARVIEW CONCRETE PIPE CORP., :
d/b/a CLEARVIEW CONCRETE PRODUCTS CORP. and GRAND PRE-STRESSED CORP., : Case No. 29-CA-3560

-and- :

EARL NARE, an individual :

- x

16 Court Street
Brooklyn, New York
Wednesday, February 20, 1974

The above-entitled matter came on for further hearing, pursuant to adjournment, at 10:00 o'clock, a.m.

BEFORE:

BENJAMIN B. LIPTON, ESQ.,
Administrative Law Judge

APPEARANCES:

MARTHA KAVE, Esq. 16 Court Street, Brooklyn, New York, appearing on behalf of the Counsel for the General Counsel

FRANCIS P. DONELAN, Esq. Of Counsel, Hynes & Diamond, Esqs., 25 Broadway, New York, New York, appearing on behalf of the Respondent.

- - -

I N D E X

WITNESS	DIRECT	CROSS	REDIRECT	RECROSS
Vincent DeLillo	171	177		
George Russo	182	190		
Thomas Monahan	199	217	230	231

EXHIBITS	FOR IDENTIFICATION	IN EVIDENCE
General Counsel's:		
2	- -	171

- -

PROCEEDINGS

JUDGE LIPTON: Now, do you have any witnesses, Mr. Donelan?

MR. DONELAN: Excuse me, your Honor?

JUDGE LIPTON: You have how many witnesses?

MR. DONELAN: I have three witnesses.

JUDGE LIPTON: On your motion for continuation, could you have Mr. Frances here on Monday, next week, the 25th?

MR. DONELAN: May I have a minute, your Honor, to speak to Mr. DeLillo?

Your Honor, it seems that I have a predicament on that.

I know it is of no concern to your Honor, the problem that we have with this job that we are getting off the ground, but the problem is that Mr. Frances will not be available on the 25th.

He is working on the Community College job, and this job is getting off the ground now, he is out there to ground out the necessary forms as to what they need for the pre-stessed concrete documents, and apparently there is great difficulty in getting him back before the 28th.

JUDGE LIPTON: All right, the following Monday is the 4th of March, are you available?

MS. KAVE: I am.

MR. DONELAN: Yes, your Honor.

JUDGE LIPTON: We will set it for 11:00 o'clock on Monday, March 4th.

MR. DONELAN: Thank you, sir.

JUDGE LIPTON: There will be just that one witness?

MR. DONELAN: Yes, sir.

JUDGE LIPTON: And, of course, any rebuttal.

Now, so far as rebuttal is concerned, you may put on rebuttal witnesses concerning the responses of witnesses today.

We will get in as much as possible today, if you have rebuttal.

MS. KAVE: Your Honor, I believe I reserved the right to call another witness, when I rested my case, because there is one other witness I would like to call who I have been unable to contact.

JUDGE LIPTON: Do you have that witness here?

MS. KAVE: I have tried to get him.

It is Mr. Rizzo at the Union, and I am trying to contact him.

I have left messages but last night it was after 5:00 o'clock before I had an opportunity to contact him, and he has not called me back yet.

I have a message for him to speak to someone in

my office.

JUDGE LIPTON: You don't have any of your witnesses here today that testified yesterday?

MS. KAVE: No, my witnesses are on their way.

They called me from the Long Island Railroad and told me that their train was late, but they were on the station and they were coming, so I assume they will be here any minute.

JUDGE LIPTON: All right, they will be here?

MS. KAVE: Yes.

JUDGE LIPTON: To the extent that you can use them for rebuttal, we will leave open Mr. Rizzo and Mr. Frances for Monday, March 4th.

MS. KAVE: Fine.

JUDGE LIPTON: And any rebuttal you have, as to Mr. Frances' testimony.

All right, Mr. Donelan, you may call your first witness.

MR. DONELAN: Yes.

Mr. DeLillo, take the stand, please.

Whereupon,

VINCENT DE LILLO

was called as a witness by and on behalf of the Respondent and, having been first duly sworn, was examined and testified as follows:

JUDGE LIPTON: Please be seated.

State your full name.

THE WITNESS: Vincent DeLillo, D-e-L-i-l-l-o.

Address, 7 Sully Drive, Munsey Park, New York.

MR. DONELAN: Your Honor, may we go off the record just one moment, please?

JUDGE LIPTON: Off the record.

(Discussion off the record.)

MS. KAVE: Would you mark this letter as General Counsel's Exhibit No. 2, please.

(The document above-referred to was marked General Counsel's Exhibit No. 2 and was received in evidence.)

JUDGE LIPTON: All right, you are offering the letter and it's admitted by stipulation, it's already been discussed off the record.

MS. KAVE: I have a copy of the letter.

DIRECT EXAMINATION

Q (By Mr. Donelan) Mr. DeLillo, will you tell us what position you hold with either Clearview Concrete or Grand Pre-Stressed?

A Vice President.

Q Are you Vice President of both those companies, Mr. DeLillo?

A Yes, I am.

Q And could you explain for us, briefly, some of the duties that you perform as vice president of those companies?

A I would say basically a general overseer of both sales, production and plant facilities.

Q Mr. DeLillo, there has been a letter marked in evidence as General Counsel's Exhibit 2, which letter by agreement was received on or about July 23 or July 24, 1973.

Do you remember receiving that letter, Mr. DeLillo?

(Handing to the witness.)

A Yes, I do.

Q Mr. DeLillo, prior to the receipt of that letter had you ever heard of District 15 of the International Association of Machinists and Aerospace Workers?

A No, not at all.

Q Prior to the receipt of this letter, Mr. DeLillo, had you ever discussed District 15 with any employee of Clearview or Grand Pre-Stressed?

A No, not District 15.

Q Had you ever discussed -- have you ever heard of Local 447 of the Machinists' Union prior to the receipt of this letter?

A No, none of these Unions were ever spoken of throughout our plant.

Q Had you ever discussed Local 447 with any representative of Clearview or Grand Pre-Stressed prior to the receipt of this letter?

A No one at all.

JUDGE LIPTON: What do you mean by representative of Clearview or Grand?

MR. DONELAN: Any management representative or any employee.

THE WITNESS: I never discussed it with anybody because I didn't know of the Union.

Q (By Mr. Donelan) Mr. DeLillo, did there come a time when you discussed that letter after its receipt with Mr. Frances of your organization?

A Yes, I did.

Q And could you tell us when that occurred?

A I would say it was around the 29th or 30th of July, I don't know the exact date, but it was in there.

Q Well, Mr. DeLillo, after that letter was received by you or by your company on the 23rd or 24th of July, could you tell us what if anything you did in relation to that letter?

A Well, the first thing I did was send a copy to yourself, without really knowing just exactly what the letter meant.

JUDGE LIPTON: You can leave that out.

We don't want any mental operations.

You sent a copy to whom?

THE WITNESS: Mr. Donelan.

JUDGE LIPTON: To your attorney, Mr. Donelan?

THE WITNESS: Right, just for his advice on the letter.

JUDGE LIPTON: All right.

Q (By Mr. Donelan) Now, Mr. DeLillo, from the time that you sent a copy of that letter to me, and I believe you testified it was July 29th or so?

A Right.

Q And the time that you discussed it with Mr. Frances, did you discuss that letter with anyone else?

A No, no one else.

Q Now, at the time you discussed that letter with Mr. Frances, had Mr. Winfield and Mr. DiSomma already been discharged?

A Yes, I believe so.

Q Now, at the time you had the conversation with Mr. Frances on July 29th, could you tell us what you said to Mr. Frances and what he said to you at that time?

A Well, we discussed the letter with him on that date, it was more a problem as to whether or not there was going to be a jurisdictional dispute between this Local that is represented in this letter and the Locals that we had

in our plant.

JUDGE LIPTON: Mr. Donelan, we don't want any elaborate explanations.

You asked him what he discussed with Mr. Frances, just say what you said to Mr. Frances and what he said to you.

THE WITNESS: I said to Mr. Frances that we may have a jurisdictional dispute over this letter and that was it, with our other Unions.

Q (By Mr. Donelan) And what did Mr. Frances say to you?

A Well, he doesn't get involved with the Union contract, so you really couldn't say anything about it.

Q I just want what he said to you, Mr. DeLillo, at that time.

A He said that there was nothing he knew about it, he didn't know anything about it.

He just didn't know anything about it.

Q Was there anyone else at that conversation, Mr. DeLillo, besides yourself and Mr. Frances?

A No, just myself and Dave.

Q Did you ever discuss that letter or the contents of that letter with Mr. Monahan?

A Oh, no, not at all.

Q Mr. DeLillo, prior to July 26th did you at any

time instruct Mr. Frances or Mr. Monahan or any other supervisor of Clearview or Grand to discharge Mr. Winfield and/or Mr. DiSomma?

A No, I never discussed it with either of them.

Q Did you ever instruct anyone to discharge Mr. DiSomma or Mr. Winfield?

A No, I didn't instruct anybody to either hire or fire people in our plant.

Q Who hires people for your plant, Mr. DeLillo?

A Dave Frances.

Q Does Mr. Frances also have the authority to discharge people?

A Yes, he does.

Q Does he do it without consultation with you or any other officer of the Company?

A Yes, he does.

Q Did you ever instruct Mr. Frances or Mr. Monahan to discharge Louis and/or Peter Leonardi?

A No, I didn't.

Q Did you ever instruct Mr. Monahan to discharge the Leonardi Brothers?

A No.

Q Did you ever instruct anyone to discharge the Leonardis?

A No, again, I didn't.

Q Mr. DeLillo, did you ever discuss or did you ever

instruct Mr. Frances to discharge Mr. Nare or Mr. Bartoli?

A No.

Q Did you ever instruct Mr. Monahan to discharge Mr. Nare or Mr. Bartoli?

A No.

Q Did you ever instruct anyone to discharge those two gentlemen?

A No.

Q Mr. DeLillo, after your conversation with Mr. Frances on July 29th, relative to the letter from District 15, did you ever have any further discussions with Mr. Frances, between that date and the date that Mr. Nare and Mr. Bartoli were discharged, on August 8th, I believe it was?

A No, I don't think so.

I don't recall any discussion.

Q Did you have any discussions during that period of time with Mr. Monahan?

A No, not at all.

Q Did you ever discuss that letter during that period of time with any other management personnel of Clearview or Grand?

A No, not with any management personnel.

MR. DONELAN: I have no other questions, Mr. DeLillo.

CROSS-EXAMINATION

Q (By Ms. Kave) Mr. DeLillo, do you sign the payroll

checks at Clearview?

A Yes, I do, for the most part.

I don't sign every check.

Q Well, who els signs checks besides you?

A Mr. Russo.

Q Do you recall signing a check for Mr. Winfield that said "Laid off" on it?

A No, I don't.

Q Do you recall signing a check for --

A I don't recall signing any of the checks, because if I am signing checks I can sign as many as 100 or 200 checks a week, and I just can't recollect any check being signed.

Q And you don't look at the checks that you sign?

A I look at a name, yes, and I recall paying them every week for the last couple of years, but --

Q You don't recall ever signing a check that said "Laid off"?

A No.

Q Well, when did you find out that these two gentlemen had been laid off?

A Mr. Frances discussed it with me some time after the end of July, that two of them were laid off.

Q Well, can you get more specific than that; was it prior to the layoff of the next two gentlemen?

A I really don't recall.

It may have been, but I really don't recall.

Q Was it when you told Frances that you had received a letter from the Union?

A On that particular day, no, it wasn't.

Q Had you ever inquired of Mr. Frances why the maintenance men were laid off?

A I have inquired, yes, and his answer was that the first two were let go for lack of work.

JUDGE LIPTON: What is it?

THE WITNESS: Lack of work, and then it seems that the other four, in his opinion, and I don't know, in his opinion were for quality of work, for poor workmanship, and I left it at that.

Again, that is his job, and that is what he is being paid for.

I left it to him whether he should hire people or fire people.

Q (By Ms. Kave) Do you know if any men have been hired to replace the six men?

A I don't know the names in particular, but I am sure that he has hired a few men to replace them.

Q So you really don't have anything to do with the employees of the company, who is being hired, who is being fired?

A No.

Q Their working conditions?

A No, nothing at all.

Q Are you more in the financial angle of the company?

A Yes.

MS. KAVE: I have no further questions of Mr. DeLillo.

MR. DONELAN: No redirect.

JUDGE LIPTON: You say you are sure he has hired men to replace --

THE WITNESS: Excuse me?

JUDGE LIPTON: You say you are sure he, Frances, has hired men to replace these men?

THE WITNESS: I am not sure he has, but I would assume that he has.

JUDGE LIPTON: You have no knowledge?

THE WITNESS: No.

Like I said, not any name in particular.

JUDGE LIPTON: Do you have any knowledge as to numbers?

THE WITNESS: That he --

JUDGE LIPTON: Number of men that he hired to replace the maintenance men who were discharged?

THE WITNESS: No, I don't.

JUDGE LIPTON: You don't even know how many?

THE WITNESS: No, there is no way of my knowing.

JUDGE LIPTON: Do you keep your office on the premises?

THE WITNESS: Yes.

JUDGE LIPTON: Where?

THE WITNESS: Well, our main office --

JUDGE LIPTON: Just a moment.

Just a moment, where is your office?

THE WITNESS: My office is on 60 East Industry Court.

JUDGE LIPTON: Where is that?

THE WITNESS: It is about two blocks west of our plant facility.

JUDGE LIPTON: Are you in the plant facility?

THE WITNESS: Am I in the plant facility? No.

JUDGE LIPTON: Are you in the plant frequently?

THE WITNESS: I don't know what you call frequent. Once a week, if that is frequent.

JUDGE LIPTON: Are you in touch with the plant daily?

THE WITNESS: Yes, for the most part.

JUDGE LIPTON: By telephone?

THE WITNESS: By telephone, yes.

JUDGE LIPTON: Anything further of this witness?

MR. DONELAN: No, your Honor.

JUDGE LIPTON: The witness is excused. Thank you.

We will be off the record a moment.

(Discussion off the record.)

JUDGE LIPTON: We are on the record.

Mr. Donelan?

MR. DONELAN: Yes.

Mr. Russo, please.

Whereupon,

GEORGE RUSSO

was called as a witness by and on behalf of the Respondent and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q (By Mr. Donelan) Mr. Russo, would you state your address for the record, please.

A 61 Frankel Road, Massapequa, New York.

JUDGE LIPTON: Your full name?

THE WITNESS: George Russo.

Q (By Mr. Donelan) Mr. Russo, could you tell us by whom you are employed?

A Clearview Concrete Products Corp.

Q And tell us what position you hold with that company?

A Corporate Secretary.

Q Are you also employed by Grand Pre-Stressed Corp.?

A I am also Corporate Secretary of Grand Pre-Stressed

Corp., yes.

Q Now, Mr. Russo, will you tell us briefly what duties, functions, you fulfill as corporate secretary of those corporations?

A Basically and primarily the financial end.

That is the easiest way I can describe it, the financial end of it, the flow of money.

Q Do you have anything at all to do, Mr. Russo, with personnel and -- do you have anything to do with personnel, first of all?

A In these years, no, not at all.

Q Are you in charge of the corporate records of the Company, Mr. Russo?

A Yes.

Q Mr. Russo, did you ever speak to anyone in Clearview or Grand, that is anyone in the management of Clearview or Grand, about District 15 of the International Association of Machinists and Aerospace Workers, at any time prior to July 29th, 1973?

MS. KAVE: Objection.

Objection, your Honor.

I cannot see the relevance of the question, there is no allegation --

JUDGE LIPTON: I have not seen the relevancy of most of the questioning thus far today.

MS. KAVE: I agree.

JUDGE LIPTON: There is no allegation as to this employee?

MS. KAVE: None at all.

JUDGE LIPTON: If you think this is a defense, go ahead.

MR. DONELAN: Yes.

Q (By Mr. Donelan) Mr. Russo, did you ever speak to anyone in management about District 15?

A No.

Q Did you ever speak to any employee in Clearview about District 15?

A No.

Q Now, Mr. Russo, when for the first time did you learn of District 15?

A I learned of a problem, some mention of executing something about the NLRB came in.

MS. KAVE: Your Honor, I would like to have a continuing objection as to the relevance of his testimony.

JUDGE LIPTON: You have a continuing objection to a particular line, but I cannot give you a blanket, automatic continuing objection, because some of these questions vary.

This last question, when is the first time you learned of a problem --

MR. DONELAN: Yes, when was the first time he heard of the District 15, I believe is the question.

JUDGE LIPTON: And this man is corporate secretary, and his duties are purely financial and he has nothing to do with personnel, and now you are going into personnel, and I think we are wasting a lot of time thus far, but go ahead, you can answer that question.

When is the first time that you learned of a problem?

THE WITNESS: In late August, when the case came from the NLRB.

Q (By Mr. Donelan) Now, Mr. Russo, during the spring and summer of 1973, were you aware of what work was going on in the Clearview and Grand plants in Deer Park?

A In generalities, yes. Yes.

Q Did you have occasion to visit down to the plant during that period of time?

A Infrequently, but, yes, I did go down, yes.

Q And were you -- did you observe any work being done on what was referred to as bogies, Mr. Russo?

A Yes.

MS. KAVE: Objection, your Honor, Counsel is leading the witness.

JUDGE LIPTON: Yes, he is indeed.

Try to put your questions so that the witness

testifies free, without having to answer affirmatively or negatively to the contents of the question.

MR. DONELAN: Yes, your Honor.

Q (By Mr. Donelan) Mr. Russo, on your infrequent visits to the plant in the spring and summer of 1973, could you tell us what you observed?

A Yes, work on bogies that I had purchased several months prior.

Q Could you tell us what bogies are, Mr. Russo?

A They are used, known as dollies or bogies, nothing more than a set of eight wheels with a frame built on top, which will support a heavy concrete member, that plus the member itself actually makes what you would call a trailer effect.

Q Now, during the spring and summer of 1973, Mr. Russo, did any representative of Clearview or Grand discuss with you the work that was being done on the bogies?

JUDGE LIPTON: What do you mean by representative, management?

MR. DONELAN: Anyone in a supervisory capacity.

THE WITNESS: Not specifically, no.

JUDGE LIPTON: This witness is obviously incompetent to testify to the subject of the whole background.

He is purely financial, has little to do with anything else, production or personnel, and infrequently

comes down, and you are asking him to testify as a Company's competent witness on this subject, but I will permit you to go ahead if you don't string this out.

Q (By Mr. Donelan) Mr. Russo, on any one of your visits to the plant, did you observe the completion of the work with respect to bogies?

MS. KAVE: Objection, your Honor.

JUDGE LIPTON: Sustained.

Q (By Mr. Donelan) Mr. Russo, did there come a time when the work on the bogies was completed?

A Yes, because we were using them, delivering the product up to North River, some time in late July, the last week in July, in that area, of '73.

Q Now, Mr. Russo, you testified you had purchased the bogies some months earlier?

A April or May of '73.

Q And by the end of July were all of those bogies in use, Mr. Russo?

A Yes.

MS. KAVE: Objection.

JUDGE LIPTON: I am going to sustain it on the leading.

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Now, I want to caution you, don't persist in leading.

Whatever questions you have written down, Mr. Donelan,

insofar as answer is to leading questions, it will affect the weight to be given the answers, particularly if there is some conflict, or the question of competency, it will affect the weight.

Q (By Mr. Donelan) Mr. Russo, during the spring and summer of 1973, do you know how many mechanics were employed in the Clearview-Grand plants?

A I knew later how many there were that spring.

JUDGE LIPTON: You were sitting throughout this hearing, weren't you?

THE WITNESS: I am not saying what I heard here.

He asked me did I know it then, I am assuming it that way, I don't know.

In August when I reviewed things, after I got this notice, if you want me to say it, about the charges and I went back and saw what was going on, and how many were working, yes, there were six at that point.

Q (By Mr. Donelan) Now, Mr. Russo, I presume you have heard the testimony as to the discharge of the six gentlemen who are the complainants in this particular matter?

A Yes.

Q Mr. Russo, subsequent to their discharge, did Clearview or Grand hire mechanics to replace any or all of those six gentlemen?

A Some time in August, later August, there was one, and then another one that was finally hired.

We have two right now.

Q You presently have two?

A Right.

Q Are both of these gentlemen working days, or do you have any on the night shift?

A Basically days, there is no night shift any more.

Q Have you operated with two since August, since the time you hired these gentlemen in late August of 1973?

A Basically we have used no more than two, which is all we have ever used for years prior also.

Q Now, Mr. Russo, I presume you have heard the dates of discharge that Mr. Nare and Mr. Bartoli were discharged, on August 8th of 1973, do you recollect that testimony?

A Yes.

Q Mr. Russo, do you know when the first mechanic was hired after that date?

A After that date?

Q Yes.

A Approximately the last week of August, I would say.

Yes, about the last week, the very last week of August.

Q And do you know when the second mechanic was hired?

A Maybe a week later.

Q Mr. Russo, after the discharge of the six gentlemen, did you have any discussions with Mr. Frances relative to their discharge?

A I had discussions with Mr. Frances after the NLRB charges came in.

At that time I had an opportunity and I found out things that were happening, and I had a conversation with him, late in August.

Q Could you tell us what you said to him and what he said to you in that conversation?

JUDGE LIPTON: I would like to know what possible relevance this has.

In the first place, it is internal management.

There is only one Respondent here and, secondly, the action had already been taken.

What they discussed afterwards has no relevance, so far as motive, purpose or anything else, unless it is purely self-serving.

MR. DONELAN: I have no further questions of Mr. Russo.

CROSS-EXAMINATION

Q (By Ms. Kave) Mr. Russo, how often do you visit the plant?

A Once every couple of weeks, most likely I will take

a ride down.

Q Well, could you be more specific?

By once every couple of weeks, do you mean once a month, once every two months?

A No, once every couple of weeks, maybe once every couple of weeks I will take a ride down.

Q By "ride down" where is your office located?

A A couple of blocks down.

I overlook the plant, I can see it all.

Q You testified that you saw work on bogies in late spring and early summer?

A Yes.

Q How often did you go to the plant in late spring and early summer?

A Again, once every couple of weeks I would be down there.

Q Can you name any specific dates that you visited the plants?

A No.

Q Can you name any men that you saw working on the bogies?

A I assume I saw some of the men here working on them.

Q Can you please tell me who you saw working on the bogies?

A Well, a couple of the boys here, John, the other guy, I don't know them, really.

I know them from here, I don't know them individually.

Q Did you see any of the men sitting here working on anything else besides bogies during that period of time?

A I saw them working, walking back and forth, carrying things, yes.

I don't know if they were doing anything else, or going back to where they were, I wasn't there that frequent.

Q Now, you testified that at the end of July work was completed on the bogies, is that correct?

A Right.

Q Now, since you testified that you only have to do with the financial angle of the business, and nothing to do with the production angle, what do you base your knowledge that work was completed on the bogies?

A We all have a main concern, only because in the management-financial end, I know when things have to be used to produce or to handle a contract that I have gotten, and those bogies were part of the handling of a job that I had, and had to be delivered, so I was concerned about that problem.

Q Would you have any knowledge about the work of the

mechanics, other than the work on this specific project?

A You mean the physical work of a given man?

Q Yes.

A No.

Q Do you have any knowledge as to what the mechanics were doing prior to late spring, when they started working on these bogies?

A Specifically, again, no.

Q Do you have any general knowledge?

A Oh, general maintenance.

They were working on another set of bogies.

We had another six in there, older ones that I think were working on that at that time.

Q Do you have any knowledge what they were working on at the time when they were discharged in early August?

A Finishing up the bogies.

Q Were the bogies finished at the time when the last two were discharged in August 8th?

A Yes, the last two, according to the time here in August.

I don't know what they were doing, I don't know.

I think there was some testimony that some needed some repair work on them, I think there was some testimony.

Q You testified that you knew there were six mechanics working there in the summer?

A Right.

Q And what do you base this knowledge?

A Again reviewing all the records that I went through in late August.

Q What records are you referring to?

A Payroll records.

Q Did your payroll records indicate that there was a gentleman by the name of Mr. Gomez working for the Company?

A Yes, he is a laborer, if I am not mistaken.

If I am not mistaken, he is a laborer.

Q Is a laborer different than a welder?

A No, a laborer can be a welder at the time.

He may have the technique and the ability to be a welder, yes.

Q If he does solely laboring work, would you consider him a laborer?

A I don't know what he did, I don't know what he did specifically.

JUDGE LIPTON: Well, don't testify to anything you don't know.

THE WITNESS: That is why I said I don't know.

Q (By Ms. Kave) Were you familiar with a man by the name of Mr. Arty Carbone?

A No.

Q Does your personal record show that name?

A Yes.

Q Do you know what Mr. Arty Carbone does?

A From testimony I know that he did some welding, that is all I can tell you.

Q You also testified that since the six men were laid off there have been two replacements hired?

A Yes.

Q On what do you base that?

A Payroll records.

Q Would you give the names of the two replacements, please.

A A man by the name of Russo, no relative of mine, and the second one Cagonaloi.

Q Do you know what kind of work Mr. Russo is doing?

A He is doing all of the general maintenance work that was done before.

Q That was done by Mr. DiSomma and Mr. Winfield --

A No, no, no.

If I can elaborate, they were doing a specific job that we are talking about, that these are not doing today, these two people.

JUDGE LIPTON: How do you know all this, since you are just a corporate secretary?

You didn't hire Mr. Russo, did you?

THE WITNESS: No, I didn't hire them, but I can answer that.

In light of the problem that came to effect in late August, I have gotten deeply into this thing, I will put it that way, your Honor.

JUDGE LIPTON: You mean after the fact?

THE WITNESS: After the fact.

JUDGE LIPTON: You made it your business to ascertain --

THE WITNESS: Yes, I will put it that way, I will put it that way unfortunately, but after I got the papers served on me I got very deeply into this problem.

Q (By Ms. Kave) Do you know if Mr. Russo is working any overtime?

A If I remember, I think there is some overtime, yes.

Q Do you know if Mr. Cagonaloi is working overtime?

A I think there is some with him too, yes.

Q Now, you testified that Mr. Frances told you that the first two gentlemen were laid off because they were slow?

A Because they were slow?

I didn't say that.

JUDGE LIPTON: That is not his testimony.

Q (By Ms. Kave) Did you ever ask Mr. Frances why he didn't call back some of the gentlemen that he laid off

before he hired new employees?

A We had a conversation but, again, we are going into late August, when this was all done, and if I can say it, from the problems of the two that he let go for lack of work, and I will repeat only what was said to me, because I discussed it with him, getting down to then the problem of work not being done properly with the rest of the men, I don't think he was in any mood to rehire any of the men that had worked.

MS. KAVE: I move that that part of the answer be stricken.

JUDGE LIPTON: I will let it remain.

This is what Mr. Frances told you?

THE WITNESS: That is right.

So, again, he was in no mood to rehire any of the people that worked there before.

Q (By Ms. Kave) Did Mr. Frances tell you why he laid off his men out of seniority, why he didn't lay off Mr. Gomez and Mr. Carbone first, since they were the newest employees?

A Well, they were laborers.

I don't think -- again, if my memory is right on that, they were laborers who just did something once in a while, they weren't specific men working on a specific job.

JUDGE LIPTON: Are you relying just on your memory?

THE WITNESS: On this particular case, yes.

JUDGE LIPTON: And you didn't check your payroll records?

THE WITNESS: I know that they were worked.

I know that they worked, but to say that they did just what they said, no.

They were laborers.

JUDGE LIPTON: So as far as you know, when you made a point to check all of these out, as laborers were they in the very beginning members of the Laborers' Union?

THE WITNESS: I think they are, your Honor.

I couldn't swear to that right now.

JUDGE LIPTON: Well, that is what you are here for, to swear.

THE WITNESS: Well, I can't swear, because I don't know.

JUDGE LIPTON: Well, we don't want any generalized testimony on this based on speculation.

THE WITNESS: I could check it out, but I don't know right now.

JUDGE LIPTON: We don't have any time for checking.

Q (By Ms. Kave) Mr. Russo, could you, based on your visits to the plant, occasional visits to the plant, tell us what are the two maintenance men doing right now,

what are they working on?

A Whatever is required to be fixed, whether it is the pipe machines or any work on the trucks, any work that has to be done.

Q Do you have any specific knowledge what they are doing, what they are working on right now?

A No.

At this moment, no.

Q But you did know what these six men were working on?

A Again, because I was interested in that problem, because I got those things.

MS. KAVE: I have no further questions, your Honor.

MR. DONELAN: No redirect, your Honor.

JUDGE LIPTON: The witness is excused.

Call your next witness.

MR. DONELAN: Yes.

Mr. Monahan, please.

Whereupon,

THOMAS MONAHAN

was called as a witness by and on behalf of the Respondent and, having been first duly sworn, was examined and testified as follows:

JUDGE LIPTON: Please be seated.

DIRECT EXAMINATION

Q (By Mr. Donelan) Mr. Monahan, would you give us your name and address, for the record, please.

A Thomas Monahan.

Q Your address, please?

A 1871 Goldbach, G-o-l-d-b-a-c-h, Ronkonkoma.

Q By whom are you employed?

A Clearview Concrete Pipe.

Q Do you do any work for Grand Pre-Stressed Corp.?

A On occasion.

Q Could you tell us what your duties are? Could you first of all tell us what position you have with Clearview?

A Labor foreman, in charge of laborers and at times the mechanics also.

Q Tell us what your duties are in that position, Mr. Monahan?

A Set up the crew, make sure of the production, the pipes that are made, the production end.

Make sure the equipment is running when we need it, when we need it.

JUDGE LIPTON: You are going to have to speak a little louder, Mr. Monahan.

Try to speak up.

THE WITNESS: Okay.

JUDGE LIPTON: Take your hand away, you will be

more audible.

Q (By Mr. Donelan) Now, Mr. Monahan, do you know John Winfield?

A Yes.

Q Do you know what type of work Mr. Winfield was performing in the spring and summer of 1973?

A Yes.

Q Could you tell us what work that was?

A He was working on the bogies with Leonardi and Pete.

Q Do you know Mr. DiSomma?

A Yes.

Q Could you tell us what work Mr. DiSomma was working on?

A He was fabricating -- he was fabricating the bogies at the time.

Q Mr. DiSomma?

A Right.

Q And do you know Mr. Louis Leonardi?

A Yes.

Q And do you know what work Mr. Leonardi was performing in the spring and summer of 1973?

A He was maintaining -- at night he was taking care of the equipment, and he was also working on the bogies.

Q And what about Mr. Peter Leonardi, do you what he was doing during the spring and summer of 1973?

A He was painting forklifts and bogies.

Q And what about Mr. Bartoli?

A He was maintaining equipment, forklifts, pipe machines, and he also worked on the bogies at the time.

Q What about Mr. Nare during the spring and summer of 1973?

A Equipment, general equipment.

Q Did he also do work on the bogies?

A Yes.

Q Mr. Monahan, did you ever have any discussions with any of the six gentlemen whose names I have just given to you concerning District 15 of the International Association of Machinists and Aerospace Workers?

A No.

Q Did you ever have any discussions with any of these gentlemen at any time concerning that particular Union?

A No.

Q Did you ever tell any of these gentlemen at any time not to join that particular Union?

A No.

JUDGE LIPTON: He has already testified that he had no discussion whatsoever at any time.

Q (By Mr. Donelan) Now, Mr. Monahan, did there come a time when -- I withdraw that.

Mr. Monahan, you indicated that these gentlemen

were working on the bogies during the spring and summer of 1973, is that correct?

A Yes.

Q Now, did there come a time when work on the bogies was completed?

A Yes.

Q And, could you tell us when that was, please?

A Well, we had fabricated for the new ones and we had completed changing -- just about finished changing the others.

Q And do you know when the work was completed on those bogies?

A The exact date, no.

Q The approximate date?

A Around, I guess, August, July we had finished them off one at a time, you know.

I couldn't be accurate, specific what time they were finished, but they was done.

We were delivering beams with them at that time.

Q Do you know when you were delivering beams with them?

A I think it was August, July.

Q Of 1973?

A It was that summer, right.

Q Of 1973?

A Right.

Q Now, Mr. Monahan, after the work of the bogies was completed, and after the discharge of these six gentlemen involved in this matter --

JUDGE LIPTON: These questions, Mr. Donelan, have a content?

I am not satisfied with this witness' testimony that after the work on the bogies was completed.

Are you testifying that there wasn't anything whatsoever to do on the bogies in July and August?

THE WITNESS: Well, there is always something to do.

JUDGE LIPTON: Well, don't assume there is a full completion of the bogies.

Get right to your question.

Q (By Mr. Donelan) Were you present when Mr. DiSomma or Mr. Winfield were discharged?

A When DiSomma -- no.

Q Did you speak with either of those gentlemen on the day they were discharged?

A After they were discharged.

Q After they were discharged?

A No.

Q Did you ever speak with Mr. Earl Nare on that day?

A No -- well, I spoke to him, he was there at the

plant.

I must have spoken to him.

Q Do you recall what you and Mr. Nare said to each other on that day?

A The day they got laid off, we didn't say too much.

Q That is the day that Mr. DiSomma and Mr. Winfield got laid off?

A Right.

Q Yes?

A I mean, when they got laid off, wasn't there when they got laid off.

I don't believe I spoke to them after they got laid off, they had left.

Q Were you present when Mr. Louis Leonardi and Mr. Peter Leonardi were laid off?

A Yes.

Q Can you tell us where this took place?

Did it take place in the plant?

A Yes, by the mechanics' area.

Q And was Mr. Frances present?

A Yes.

Q Could you tell us what if anything Mr. Frances said to the Leonardis?

A He said we was a little slow and he had to let them go.

Q Did either Mr. Louis or Mr. Peter Leonardi respond to the statement that Mr. Frances made?

Did you say anything at that time?

A No.

Well, we said good bye, we shook hands and they left.

Q Did either one of the Leonardis discuss with you, or did they ask you if you knew why they had been let go?

A No.

Q Were the Leonardis working on the night shift at that time, Mr. Monahan?

A Yes.

Q Now, between the time that Mr. Winfield and Mr. DiSomma were laid off and the following week on which the Leonardis were laid off, did you observe the work that had been performed by the Leonardis during that week?

A Yes.

Q Would you be kind enough to tell us what you observed, with relation to the work that they performed during that week.

JUDGE LIPTON: I think we will need a bigger predicate.

Were you there during all the time they were working?

THE WITNESS: No, part of the time they was working.

JUDGE LIPTON: What part of the time?

THE WITNESS: The early evening.

JUDGE LIPTON: What time did you leave for the day?

THE WITNESS: It varied. Some times -- normally, I leave at 5:30.

A lot of times I leave at 9:30, 10:30, 11:00 o'clock.

JUDGE LIPTON: What time did you leave during that period?

THE WITNESS: I couldn't be specific.

It varies, some times I am there later, some times I am there earlier.

JUDGE LIPTON: You don't remember when you left that week, between August 2nd and August 8th?

THE WITNESS: More than likely, about 6:00.

JUDGE LIPTON: Don't guess.

Do you remember?

THE WITNESS: No, I don't remember.

JUDGE LIPTON: And you stood there and observed their work, is that what you are testifying?

THE WITNESS: Not all day.

I mean, I observed -- I have about 40 people I have to observe.

JUDGE LIPTON: You have 40 people to observe?

THE WITNESS: Right.

JUDGE LIPTON: All right, to the extent that you

observed them, for that period of time, the Leonardis, is that the question, what did you observe?

THE WITNESS: At that time?

JUDGE LIPTON: That is the question, between August 2nd and August 8th, what did you observe on the part of the Leonardis?

THE WITNESS: Whatever work they was doing at the time.

JUDGE LIPTON: All right, you just observed their work?

THE WITNESS: Right.

JUDGE LIPTON: Go ahead, Mr. Donelan.

Q (By Mr. Donelan) Could you tell us whether or not you expressed to them any dissatisfaction with their work?

t3 MS. KAVE: Objection.

JUDGE LIPTON: I will sustain it.

Now, Mr. Donelan, we have gone through this leading question business, especially this kind of a question which contains a conclusion.

You can simply ask him what he said to them and let him state what it was.

A Well --

JUDGE LIPTON: Hold it.

Put your next question.

MR. DONELAN: Well, I was going to ask him whether

or not they were given assignments in the evening.

JUDGE LIPTON: Ask him what he did, and let him say whether he did or not.

He is your witness, presumably you have reason to anticipate his answers.

What did you say to the Leonardis?

THE WITNESS: What he was saying --

JUDGE LIPTON: Just answer the question.

THE WITNESS: What did I say to them?

JUDGE LIPTON: Yes.

THE WITNESS: At the time?

JUDGE LIPTON: Between August 2nd and August 8th.

THE WITNESS: Whatever work we had to do.

If I was there at the time when I had to have something done, I told them to do it.

Whatever other work we did, we used to mark on the board and they used to take care of it that night.

We used to make a list.

Now, at that time the work became a little bit unsatisfactory and I had discussed it with Dave Frances, and he told me that he would speak to them, and that is all.

JUDGE LIPTON: You telling them the work had become a little unsatisfactory is not an answer to the question.

The question is, what did you tell them?

THE WITNESS: Well, I tell them about what?

Specifically you want something I told them?

JUDGE LIPTON: Did you tell them anything at all, to the Leonardis, did you?

THE WITNESS: Certainly.

I told them certain machines to fix, certain belts that had to be taken care of, or things to be cleaned up, machines to be cleaned, scraped or whatever we had to do in general to work.

JUDGE LIPTON: Did you tell them anything at all about the quality of their work?

THE WITNESS: Excuse me?

JUDGE LIPTON: Did you tell them anything about the quality of their work?

THE WITNESS: No, that is Dave Frances' job.

JUDGE LIPTON: You are just asked to testify for yourself.

Did you tell them anything?

THE WITNESS: No.

JUDGE LIPTON: Go ahead, Mr. Donelan.

Q (By Mr. Donelan) Did you tell Mr. Frances anything about the quality of their work?

A Yes.

Q And could you be kind enough to tell us what you said

to Mr. Frances and what he said to you, if anything.

A You mean specific or --

Q As best you can remember, what you said to Mr. Frances about their work.

A I told him at times we needed certain machines in the morning for production, and that I had written it on the board or I had spoken to Louie, and I told him specifically we needed that piece of equipment for the morning, for 6:00 o'clock, and on occasion in that last week there, there was one day when the machine was not ready, there was a machine that was not ready in the morning.

I told Davey, Davey spoke to him.

JUDGE LIPTON: Never mind what Davey said to him, unless you were standing there.

THE WITNESS: No, I wasn't standing there.

JUDGE LIPTON: One day the machine was not ready in the morning?

THE WITNESS: Right.

JUDGE LIPTON: All right.

Q (By Mr. Donelan) Was there anything else, were there any other things concerning the quality of the Leonardis' work that you discussed with Mr. Frances during that week?

A As far as a little bit of maintenance, we have

certain maintenance on some conveyors and stuff that was not being done, that definitely was not being done, and I asked Davey could he have it taken care of, and he said he would have it taken care of.

Q Now, were you present when Mr. Nare and Mr. Bartoli were let go?

A Present?

Q Yes.

A Was I there?

Q Yes.

A Yes.

Q Did you hear any conversation between Mr. Frances and either Mr. Nare or Mr. Bartoli?

A No. I was in the plant but I wasn't there when he let them go.

Q Now, between the time that Mr. Winfield and Mr. DiSomma were discharged on July 26th, and the time that Mr. Nare and Mr. Bartoli were let go, did you observe Mr. Nare and Mr. Bartoli in the performance of their duties?

A Yes.

Q Did you say anything to Mr. Nare or Mr. Bartoli concerning the quality of their work?

A No.

Q Did you say anything to Mr. Frances concerning the quality of the work of Mr. Nare or Mr. Bartoli?

A Yes.

Q Could you please tell us what you said to Mr. Frances and what he said to you.

A Well, when I needed -- when we are in production we need certain pieces of equipment, certain machines that have to be running on time.

JUDGE LIPTON: Excuse me, can you just answer the question, Mr. Witness.

What did you say to Mr. Frances?

THE WITNESS: Well, I asked could he speak to Earl, and on one occasion when a machine we had out front, the 400, I needed the machine, I asked him to take care of it and he told me when he was ready he would take care of it.

JUDGE LIPTON: This is Mr. Frances?

THE WITNESS: I'm speaking to Mr. Frances, right.

JUDGE LIPTON: What did you say to Mr. Frances?

THE WITNESS: I told him would he go back and speak to Earl and tell him we need the machine, would he get it running, and he said okay.

Q (By Mr. Donelan) Did you have any other discussions with Mr. Frances during that two-week period?

A Well, me, myself and George had words over one of the machines, over the large pipe machine, when Davey wasn't there.

Davey was out on a job, in the field, and I had to go back to George a couple of times to get the machine fixed.

And he said when Davey came back he would straighten it out.

When Davey came back we walked over to George --

MS. KAVE: Objection, your Honor.

I don't think the witness is answering the question.

JUDGE LIPTON: He indicated the background.

Now, this is the conversation between Mr. Frances and the witness, and Mr. Frances and the witness walked over to Mr. Bartoli?

THE WITNESS: To Mr. Bartoli, and at that time Davey told George, "I told you once, I want to explain it to you --" that whether he is there or not, that I am in charge, and that Davey -- you see, Davey is in charge of everything.

If Davey tells him to do something and I need something right away and I tell him to do it, and Davey is there, he fixes whatever he tells him to do should be done first.

He can go to Davey and ask Davey whether he wants him to do what I asked him or what he told him to do first.

When Dave Frances is not there, whatever I say

has to be done, has to be done right away.

JUDGE LIPTON: That is what was spoken about at the time you walked up to Mr. Bartoli?

THE WITNESS: Yes.

JUDGE LIPTON: And who was doing the talking, Mr. Frances?

THE WITNESS: Mr. Frances, correct.

JUDGE LIPTON: In your presence?

THE WITNESS: Right.

JUDGE LIPTON: And Mr. Bartoli?

THE WITNESS: Right.

JUDGE LIPTON: Who else was there?

THE WITNESS: I don't recall.

JUDGE LIPTON: And what date was this?

THE WITNESS: The exact date, I couldn't be specific with the date.

JUDGE LIPTON: Well, was it in July or August?

THE WITNESS: Neither.

It was around June, July.

JUDGE LIPTON: This was June?

The question is not responsive.

THE WITNESS: Excuse me?

JUDGE LIPTON: This was about June?

THE WITNESS: June or July.

I'm not sure what date it was.

JUDGE LIPTON: The question is not responsive, because this related to the period after the discharge of Winfield and DiSomma.

Go ahead, Mr. Donelan.

Q (By Mr. Donelan) Mr. Monahan, how many mechanics do they have performing maintenance work today?

A Two.

Q After the discharge in July and August of 1973 of the six gentlemen, could you tell us when they hired a maintenance man after that date?

A A couple of weeks later.

Q And I presume subsequent to that date they hired a second one?

A Right.

Q And have they operated with these two maintenance mechanics since that time?

A Yes.

Q Does that make up the full complement of your maintenance mechanics staff at the present time?

A Yes.

Q Mr. Monahan, did you ever tell Mr. Bartoli or anyone else that the men would be laid off two by two?

MS. KAVE: Objection.

A No.

JUDGE LIPTON: Hold it.

The objection is overruled.

MR. DONELAN: Just one minute, please. I don't know if it was answered or not.

JUDGE LIPTON: The answer was no.

Are you concluded at this point?

MR. DONELAN: Just one moment, please.

I have no other questions.

CROSS-EXAMINATION

Q (By Ms. Kaye) Mr. Monahan, what work was Mr. DiSomma doing at the time when he was discharged?

A When he was discharged?

Q Yes, on July 26th.

A When he was discharged?

Q Yes.

A He was welding.

Q Was he doing purely welding work?

A Yes.

Q What was he working on?

A On the day of his discharge, I don't know.

Q On the week of his discharge?

A I don't recall.

Q Well, you testified that Mr. DiSomma was fabricating the bogies?

A Right.

Q Now, that was in the summer, what was Mr. DiSomma

doing prior to when he began fabricating the bogies?

A When he came there, that is what he started doing, I believe.

I don't recall.

Q Do you know how long he has been working for the Company?

A About two years.

Q And that is what he has been doing for two years?

A Off and on.

I mean, that is his project.

They stay there all the time, but if we have other welding to do, they do it also.

JUDGE LIPTON: I am not sure I understand your answer, Mr. Witness.

Are you saying that from the beginning of his employment --

THE WITNESS: Davey hired him.

JUDGE LIPTON: Don't testify to anything you don't know.

THE WITNESS: Okay.

JUDGE LIPTON: Are you testifying that Mr. DiSomma worked on bogies from the date --

THE WITNESS: Right, when I was in charge of him.

JUDGE LIPTON: Will you allow me to finish the question?

THE WITNESS: Yes.

JUDGE LIPTON: Was he working on bogies from the moment he was hired?

THE WITNESS: I couldn't answer that. I couldn't swear to it.

I'd have to think backwards a couple of years.

Q (By Ms. Kave) The only thing that you can swear to is what he was doing in June and July of that summer?

A He was doing that before June and July.

We have been fabricating bogies for three years, now.

We have been changing them over, you understand?

You understand what I am trying to tell you? We didn't just do that for two months, that job took a few years.

Q I am a little bit confused.

Is this the sole work of the maintenance men for three years?

A Of the welders, yes, and we had other welders that spent a couple of months on them again.

Q Could I have the name of the other welders, please?

A Gomez, Rodriguez Gomez.

Q Do you know when Mr. Gomez was hired?

A No, but I know when he left.

Q When did he leave?

A November of last year.

Q That is November 1973?

A Well, yes.

Q Did he leave on his own accord?

A Yes.

Q Is it correct to say that Mr. Gomez was working for the Company for a shorter period of time than Mr. DiSomma?

A I don't know.

Q Did you have any complaints about Mr. DiSomma's work?

A No.

Q Now, you testified that Mr. Winfield was working in the evening?

A He was working days and he worked in the evenings for a while also.

Q Was he working days and in the evening as overtime, or was he working solely in the evening?

A Idon't know, you have to ask Dave.

Q When Mr. Winfield would work in the evening, what hours would he work?

A 4:00 to 12:00, I guess.

Q Is it correct that you testified that you would stay to about 6:00?

A Normally I leave at 5:30 or 6:00, yes.

Q What type of work was Mr. Winfield doing at the time when he was discharged at the end of July?

A What type of work?

Q What kind of work was he doing?

A Changing oil, I guess, maintenance. Changing oil, helping -- he helped Louie when Louie was fixing the machines.

He helped George, if he was working days he helped George.

Q General maintenance work, is that correct?

A Yes.

Q What type of work was Peter Leonardi doing at the time when he was discharged?

A Gee, I don't know.

Pete was cleaning, basically cleaning machines, even after he painted them he used to clean them and paint them again, and the bogies.

He was doing a lot of painting, cleaning and sweeping the floor, greasing.

Q Do you know how long Peter Leonardi was working for the Company?

A About 18 months, I guess.

Q And were his duties basically the same for a year and a half, were they basically the same jobs?

A For a longer period of time he was painting the

heisters.

When we got painting the heisters, the forklifts -- when he finished painting the forklifts, he went to paint the bogies.

Q And Louis Leonardi, what type of work was he doing?

A Louie?

Q Yes.

A Maintenance, general maintenance, Louie.

Q And what hours did the Leonardis work?

A 4:00 to 12:00.

Q And what were your normal hours?

A My normal hours?

Q Yes.

A From 6:00, 7:00 in the morning until 5:30, 6:00 o'clock at night.

Q Other than this complaint that you had about the Leonardis' work, that you testified to, right?

A Right.

Q Before they were discharged, had you ever complained about their work prior to that week?

A Well, on one or two other occasions, yes.

Q Could you give me an example of the other occasions?

A Well, at times -- at times when we needed a certain piece of machinery or stuff, if the machine is not ready, or the equipment is not ready, then I have to -- if I see

it is not ready, then I go to Davey and I tell him that this wasn't ready and that wasn't ready, and we have to have it for the morning.

Now, a lot of times I wind up with 15, 16 guys waiting an hour or so to get a machine started, which should be ready the night before or the day before.

Q And this had happened on prior occasions?

A Yes, and he said that he would speak to Louie or -- in the morning he would say to Earl, "Fix it right away."

Q Was it always straightened out?

A Well, the time is already lost, the time lost, you know, you can't regain.

Q And was it the same on this occasion, the week that they were fired?

A I would say more so.

Q More so in what way?

A Well, it was more of -- I don't know what was the matter with them, it was like a lapse atmosphere, if it got done, it got done.

Q What exactly -- what specific machine are you talking about that was not ready for the men in the morning?

A If you want a specific one, I would say the 130, one morning was not ready, it was still in the back, a specific machine.

But overall, anything that we had written on the

board that week, that was written on the board, normally they would rush it and they would get it ready, get it out, and we would have it ready.

Q Yuu didn't speak to any of the men directly?

A Who?

Q You did not speak to any of the men?

A Who?

Q The Leonardis, about this?

A No, I didn't speak to them directly, I spoke to Dave.

Q To your knowledge, you did not know if Mr. Frances spoke to them about this?

A He probably did -- no, not to my knowledge.

Q What type of work is Mr. Art Carbone doing?

A Arty Carbone right now is welding, he is a laborer.

Q He is welding, the same as Mr. Gomez is welding?

A Mr. Gomez is no longer with us.

Q Right.

So you have Mr. Carbone welding and you have two new maintenance men?

A Carbone was welding before Rodriguez.

Carbone worked for Grand Pre-Stressed, he used to weld over there, that is when he first came, and then from Grand Pre-Stressed he came over and did some maintenance work for us.

Q And who were the two new maintenance personnel?

A Russo and Cagonaloi.

Q And there have been no other men hired for maintenance positions?

A We have one now -- since then we have went through four, five mechanics.

JUDGE LIPTON: How many do you have now, four or five?

THE WITNESS: No, we hired two and they didn't work out, we had to let them go.

Then we hired two and they didn't work out and we had to let them go.

And then we hired two more, and they worked out, so we kept them.

Guys would come in and say they could handle the job, and they couldn't do it, so we had to let them go, and then we got other ones, until we got two mechanics that were suitable for the job.

Q (By Ms. Kave) What type of work were they hired to do, these two mechanics?

A What type of work are they doing now?

Who, Angelo and Arty?

Q I know them by their last names.

A Russo and Carbone.

Q What type of work are they doing now?

A Trucks, forklifts, a little work on the pipe machines.

If the machine is down, we send them over to work there also.

Q Are you familiar with how long Mr. Nare has been working for the Company?

A Earl, I guess, in my estimation, I don't know, I'd say five years, possibly six.

Q Now, you said the week that Mr. Nare was fired you had a complaint about his work?

A Yes.

Q Had you had any other complaints previous to this about Mr. Nare's work?

A Over the past year, maybe off and on.

Like I said, if something had to be done and if Earl was not ready or something, I would go to Dave and Dave would speak to him.

Q So you would just have a normal complaint about Mr. Nare not attending to something?

A Except that week, that week he was a little obnoxious about it.

Q But he had been working for the company for at least five years?

A Yes.

Q And what about Mr. Bartoli, how long -- are you familiar with how long Mr. Bartoli was working for the

Company?

A Well, he was out from the Company several times in between there.

You mean how much time he put in for the Company?

Q Yes.

A Maybe 15 months, 16, 18 months, I don't remember.

When he came back to work for us, he worked for a while and then he had hurt himself and I didn't see him for several months and then he had come back.

Q You testified that you had a conversation with Mr. Frances and Mr. Bartoli, where it was explained to Mr. Bartoli that when Mr. Frances is not there, Mr. Bartoli should take his orders from you, is that correct?

A Correct.

Q Did you have any specific complaints about Mr. Bartoli's work?

A Before this or after this?

Q After that conversation?

A Not that I can remember -- not that I could specifically say, no.

Q What was Mr. Bartoli's response when Mr. Frances told him that he wanted him to take orders from you?

t4 A He didn't like it.

Q Well, what did he say?

A What did he say?

Q Yes.

A He said yes.

He said, and he knew it at that time -- you mean the conversation before Davey came back, when he was out in the field?

Q I am talking about the conversation that you testified to between yourself, Mr. Frances and Mr. Bartoli.

A Go ahead.

Q Where you testified Mr. Frances told Mr. Bartoli that he wanted him to take orders from you.

A He said he knew that, but at the time he felt he was doing this here and I wanted him to go right in and fix the pipe machine.

If the pipe machine is not running the whole plant stops, and he knew this, and I don't know why he gave me sass about it.

So he told Davey, you know, he didn't know why, but next time he would.

Q Did you have any complaints about Mr. Bartoli before this?

A The same as the others, on occasion, yes.

Q So there is nothing really that was unusual about this complaint?

A Unusual about which complaint?

Q About this last complaint prior to the man being

discharged?

A More so -- well, that there was not a complaint, that was more of an argument.

I mean, when I tell somebody to do something, I want it done right away.

Now, Davey has the authority to hire and fire, so if I have any sass, I drop it there and I tell Davey, let Davey speak to him.

JUDGE LIPTON: We are getting into a philosophical area, conclusory area, argumentative area, whether it is unusual.

A (Continuing) I told him --

JUDGE LIPTON: Will you hold it, please.

This whole line, I don't know from your question whether it was unusual.

MS. KAVE: Anything unique.

JUDGE LIPTON: You are stringing this out, you are getting into areas, as I said, involving conclusions, and I don't want to get into that realm of it, it could go on forever.

Put your next question.

MS. KAVE: I have no further questions.

JUDGE LIPTON: Do you have any redirect?

MR. DONELAN: Just one question, your Honor.

REDIRECT EXAMINATION

Q (By Mr. Donelan) You indicated that Mr. Bartoli was out for a period of time?

A Yes.

Q Do you know if any mechanic was hired to replace him during that time?

A No, we didn't need one.

MR. DONELAN: Thank you.

JUDGE LIPTON: You said during the last week it appeared to you like there was a lapse.

Now, you are referring to whom?

THE WITNESS: In the night work.

JUDGE LIPTON: In the night work?

THE WITNESS: Right.

JUDGE LIPTON: And I understood your testimony that you did not speak to the Leonardi Brothers about it?

THE WITNESS: No.

JUDGE LIPTON: And you already testified as to what you told Mr. Frances?

THE WITNESS: Yes.

JUDGE LIPTON: Is Mr. Frances on the premises all the time, or at least was he on the premises all the time during July and August?

THE WITNESS: No.

No, not all the time, but 99 per cent of the time.

JUDGE LIPTON: 99 per cent?

THE WITNESS: I would say so, yes.

JUDGE LIPTON: And when he is on the premises, he is around the plant?

THE WITNESS: No -- well, he is in the office quite a bit.

He works -- he spends a lot of time in the office, which is in the plant.

JUDGE LIPTON: And he also gets out on the floor of the plant?

THE WITNESS: Yes, a little bit.

JUDGE LIPTON: Then he speaks to you daily?

THE WITNESS: Morning and night, right.

JUDGE LIPTON: What?

THE WITNESS: Yes.

JUDGE LIPTON: He speaks to you daily and regularly?

THE WITNESS: Yes.

JUDGE LIPTON: Anything further of this witness?

MR. DONELAN: No, your Honor.

RECROSS-EXAMINATION

Q (By Ms. Kave) Are you aware, do you know if Mr. Bartoli worked any other shift in the period prior to his discharge?

A Yes.

Q Mr. Bartoli?

A Yes.

Q Do you know how many hours overtime he worked a week?

A Approximately 10, 12 hours.

Q A week?

A Yes.

Q Was he paid time and a half for that overtime?

A Yes.

Q Do you know if any of the other men were working overtime?

A When we needed them, yes.

Q Do you know if any of the men worked through their vacations?

A Through their vacations?

Q Yes, forego their vacations?

A Some of the men, yes.

Q Any of the maintenance men?

A No -- I think Louie did.

Q Meaning Leonardi?

A Louie Leonardi.

MS. KAVE: I have no further questions.

JUDGE LIPTON: The witness is excused, thank you. Is there anything further at this time?

Of course, General Counsel has not fully rested in the case in chief --

MS. KAVE: Yes, now I have.

JUDGE LIPTON: Oh, yes.

General Counsel has, now that you have the stipulation on the letter.

MS. KAVE: That is right.

JUDGE LIPTON: General Counsel has rested the case in chief, and there remains just this witness, Mr. Frances?

MR. DONELAN: Yes.

JUDGE LIPTON: And any rebuttal relating thereto.

All right, we stand adjourned until March 4th at 11:00 o'clock, same place.

(Whereupon, at 11:30 o'clock A.M. the hearing was adjourned until March 4th, 1974 at 11:00 o'clock A.M.)

OFFICIAL REPORT OF PROCEEDINGS

THE

National Labor Relations Board

DOCKET NO. 29-CA-3550

IN THE MATTER OF:

CLEARVIEW CONCRETE PIPE CORP.

PLACE: Brooklyn, New York

DATE: March 4, 1974

PAGES: 234 - 343

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BEFORE THE NATIONAL LABOR RELATIONS BOARD

29th REGION

IN THE MATTER OF:	:	
CLEARVIEW CONCRETE PIPE CORP., d/b/a CLEARVIEW CONCRETE PRODUCTS CORP. and GRAND PRE-STRESSED CORP.,	:	Case No. 29-CA-3560
-and-	:	
EARL NARE,	:	
and Individual.	:	

National Labor Relations Board
16 Court Street
Brooklyn, New York
Monday, March 4, 1971

The above entitled matter came on for hearing, pursuant to notice at 11:00 o'clock a.m.

BEFORE:

BENJAMIN LIPTON, Administrative Law Judge

APPEARANCES:

MARTHA KAVE, ESQ. — Counsel for the General Counsel

HYNES & DIAMOND, ESQS. — Attorneys for Respondant Clearview
25 Broadway
New York, New York
BY: FRANCIS P. DONELAN, ESQ., of Counsel

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EXHIBITS

(NONE)

PROCEEDINGS

JUDGE LIPTON: We'll be on the record.

Now, Mr. Donelan, there's just Mr. Francis that you have?

MR. DONELAN: Yes, sir.

JUDGE LIPTON: And Mrs. Kave, you need not commit yourself now, do you expect to have rebuttal so far as you know now?

MRS. KAVE: I might.

JUDGE LIPTON: Now, is there any question that we can conclude today?

MR. DONELAN: I have none. I'm not going to be that long, Your Honor.

JUDGE LIPTON: All right.

Call your witness.

MR. DONELAN: Yes.

Mr. Francis, will you please take the stand.

JUDGE LIPTON: Raise your righthand.

Whereupon,

DAVID FRANCIS

was called as a witness by Respondant and, having been first duly sworn, was examined and testified as follows:

JUDGE LIPTON: Please be seated.

DIRECT EXAMINATION

EXAMINATION BY MR. DONELAN:

Q Would you be kind enough to state your full name and address for the record, please?

A My name is David Francis. F-R-A-N-C-I-S . I live at 28 Andover Drive, Deer Park, New York.

Q Mr. Francis, could you tell us by whom you are presently employed?

A Clearview Concrete Pipe.

Q How long have you been employed by that company?

A Eleven years.

Q Do you do any work for Grand Pre-Stressed Corp.?

A Yes.

Q Mr. Francis, could you describe for us the duties and responsibilities you have -- withdraw that.

Could you tell us what position you hold with Clearview Concrete Pipe Corp.?

A Superintendent.

Q Did you hold that position in 1973, Mr. Francis?

A Yes.

Q And would you be kind enough to describe to this hearing, Mr. Francis, some of the duties and responsbilities that you have as a superintendent for Clearview?

A My duties as a superintendent for Clearview Concrete Pipe are, I'm in charge of maintenance, and production of pipe, and seeing that they get away from the plant to their

destination. And I'm over all the men in the plant itself.

Q Now, Mr. Francis, do you maintain an office at the plant or at the executive offices of Clearview?

A At the plant.

Q And are you present at the tplant on a day to day basis?

A Yes.

Q Could you tell us what duties or functions you have with respect to Grand Pre-Stredded Corp.?

A Well, I'm in charge of all their equipment and take care of all their odds and ends jobs that other people can't take care of.

Q Does Grand Pre-Stredded Corp., operate out of the same plant, same geographical plant location as Clearview Concrete?

A Yes.

Q Now, in the spring of 1973, Mr. Francis, did Clearview and or Grand have in its employ any maintenance mechanics?

A Yes.

Q Would you tell us how many mechanics were employed?

A Actually there was five mechanics and one helper.

Q Would those be the gentlemen that are the parties to this litigation, Mr. Francis?

A Yes.

Q Now, Mr. Francis, could you describe for us -- do you know Mr. John Winfield?

A Yes.

Q Would you be kind enough to describe for us, Mr. Francis, the type of work that Mr. Winfield was performing during the spring and summer of 1973?

A Yes. John Winfield was mainly engaged in working on these boggies that we were fabricating to move the beams for the job that we were doing at the time.

Q Could you describe for us what a boggie is, Mr. Francis?

A These boggies were purchased by me in Ohio, they were Army surplus. They're old Army trailers that we took apart and refabricated so that these beams could be put on to be hauled to the different jobs that we had.

Q Now, could you tell us specifically what type of work Mr. Winfield was performing on the boggies in the spring and summer of 1973?

A Well, they came in in rough with no tires on and we -- hestarted from the beginning. He unloaded them. Then we had them all laying around the yard and I had him jockey them into position to bring them into the plant to start working on them.

And he was pulling the drums and checking the brakes

on them.

Q Now, Mr. Francis, during the spring and summer of '73, could you tell us how much time Mr. Winfield was spending working on the boggies?

A Most of his time.

Q I'm sorry, I didn't hear you.

A Most of his time.

Q Now, Mr. Francis, did there come a time when work on fabrication of the boggines was completed?

A Yes.

Q And can you tell us when that occurred?

A Towards the end of July. The beginning -- the middle of July.

Q Of what year, Mr. Francis?

A '73.

Q Now, after the fabrication work on the boggies was completed, was any other work required on those boggies?

A After they were fabricated?

Q Correct.

A If they had a flat -- not really.

Q Would --

A No. Just regular maintenance, you know, like a car maintenance, I would say.

Q Now, Mr. Francis, did you ever have any discussions at any time with Mr. Winfield concerning a union known as

Local 447 or District 15 of the Machinists?

A No.

Q Did Mr. Winfield work at any time operating a machine known as a payloader?

A Occasionally.

Q What do you mean by occasionally?

A Well, at night maybe an hour, now and then.

Q And for what purpose was he operating this machine?

A To charge the hoppers.

Q What do you mean by charging the hoppers?

A Well, they loaded the hoppers up to send material up.

Q Did he do this on a daily basis, Mr. Francis?

A No, not dauly.

Q Now, Mr. Francis, could you tell us when Mr. Winfield was let go as an employee of Clearview?

A When he was let go?

Q Yes.

A July 26th.

Q '73?

A '73.

Q Now, at -- on that date, Mr. Francis, or at any time prior to that date, did you have any discussions with any management personnel of Clearview concerning Local 447 or District 15?

A NO.

Q Did there come a time, Mr. Francis, when you had any discussion with any management personnel of Clearview concerning a letter from District 15?

A At any time?

Q At any time.

A Yes. It was the week after I let Winfield go.

Q And could you tell us whom you discussed this letter with, and where the discussion took place?

A Yes. Vincent DeLillo called me in he said to me --

JUDGE LIPTON: What's his name?

THE WITNESS: Vincent DeLillo.

JUDGE LIPTON: Spell that.

THE WITNESS: D-e-L-I-L-L-O.

JUDGE LIPTON: All right. Who is he?

THE WITNESS: His title?

JUDGE LIPTON: Or anything. Describe him.

THE WITNESS: He's my boss. My immediate boss.

JUDGE LIPTON: Is he an officer officer of the company?

THE WTINESS: Yes.

JUDGE LIPTON: Go ahead.

Q (By Mr. Donelan) Could you tell us where this occurred, Mr. Francis?

A This meeting?

Q Yes.

A Yes. Up in his office.

Q And could you tell us what Mr. DeLillo said to you at the time you had this meeting?

A Yes. He said to me that come on up I have something interesting to show you.

Now, he showed it to me and I glanced at it, and it said something about unions and those men were looking to get a union signed up.

Q Is it your testimony Mr. Francis, that this occurred after Mr. Winfield had been let go?

A Yes.

Q Do you know how long after Mr. Winfield had been let go that this particular incident occurred?

A It was either that Monday or Tuesday. I believe it was Tuesday. I'm not sure of the date.

Q What Monday or Tuesday?

A It would be the 30th or the day after that.

Q Of what month, Mr. Francis?

A July.

Q Have you ever discussed Local 447 or District 15 with any management personnel of Clearview prior to the date on which you testified?

A No.

Q All right.

You've indicated that Mr. Winfield was let go on July 26th. Did you let -- were you the person who told Mr. Winfield that he was being discharged?

A Yes.

Q Could you tell us where this occurred?

A At the rear of the plant.

Q And was anybody present besides yourself and Mr. Winfield?

A No. Not that I know of.

Q And could you tell us what you said to Mr. Winfield at that time?

A I said John, things are getting slow, I have to let you go.

Q Did you say anything to Mr. Winfield about Local 447 or District 15?

A No. When I paid him off, he ran right over to Earl, he said see, I told you something is going to happen.

Q Who said that, Mr. Grancis?

A John. John Winfield.

Q Did Mr. Winfield say anything to you at the time that you gave him his check?

A No.

Q Did he say anything to you about any union at that time?

A No.

Q Did he ask you why he was being let go?

A I told him we were getting slow.

Q No.

The question is did he ask you?

A Oh, no.

Q Mr. Francis, do you know a Mr. Sal DiSomma?

A Yes, I do.

Q And was Mr. DiSomma working for Clearview or Grand in the spring and summer of 1973?

A Yes, he was.

Q And would you please describe for us the type of work that Mr. DiSomma was performing during that period of time?

A Sal was a welder, strictly a welder.

Q And could you tell us on what work he was using his welding talent?

A On fabricating the boggies.

Q These are the same boggies you testified that Mr. Winfield had been working on?

A That's right.

Q And could you tell us how much of Mr. DiSomma's time was spent working on the boggies in the spring and summer of 1973?

A All of his time.

Q Did you ever have any discussions at all, at any time, with Mr. DiSomma concerning a union known as Local 447, District 15 of the Machinists?

A No.

Q Did you ever have any conversations with Mr. DiSomma or Mr. Winfield in which you threatened them with discharge because of any union membership?

A No.

Q Could you tell us when Mr. DiSomma was let go as an employee of -- withdraw that.'

Was Mr. DiSomma working for Clearview or Grand, Mr. Francis?

A Clearview.

Q And could you tell us when Mr. DiSomma was let go as an employee of Clearview?

A July 26, 1973.

Q Did you personally speak to Mr. DiSomma concerning his discharge?

A Yes.

Q And could you tell us where the conversation took place between yourself and Mr. DiSomma?

A At the rear of the plant where he works.

Q Was there anyone besides you and he present at that time?

A I don't believe so.

Q And would you please tell us what you said to Mr. DiSomma?

A I said to Sal, sorry, we got to let you go, things are getting slow. And then he replied, what has this got to do with the union. And I says to him what union, and I just walked away.

Q Was Local 447 or District 15 mentioned in that conversation?

A No.

Q Mr. Francis, do you know a Mr. Louis Leonardi?

A Yes, I do.

Q And would you kindly describe for us the type of work that Mr. Louis Leonardi was performing in the spring and summer of 1973?

A His duties were to get these boggies in shape because we had a deadline to make to get them out, to start working on them.

Q Who was Mr. Louis Leonardi working for, Clearview or Grand?

A Grand Pre-Stressed.

Q You just indicated, Mr. Francis, that you had a deadline?

A Right.

Q Could you tell us what you mean you had a deadline?

A The beams were originally supposed to go out July 15th.

But that later on got postponed so we had to have them all done by then.

Q What are you referring to have them all done?

A Fabricate all the boggies by that time.

Q Could you tell us, Mr. Francis, how much time Mr. Louis Leonardi was spending in the summer -- in the spring and summer of '73 in connection with the boggies?

A Practically all his time. It was -- for instance, the plant was closed that Monday of July 4th. And I brought them all into work that day on the boggies. I think Earl didn't show up because he had to go somewhere or something and John was on vacation at the time. So we use -- usually everybody would have been off that day.

It was the Monday before the holiday, you know, so I brought them in special just for them to work on them.

Q Mr. Francis, did you ever have any discussions at any time with Mr. Louis Leonardi concerning Local 447 of the Machinists union?

A Oh, yes.

JUDGE LIPTON: What's the answer?

THE WITNESS: Yes.

Q Could you tell us when you had discussions with Mr. Louis Leonardi?

A It was after -- well, it was the week of the 30th of July. The week after I let Winfield and DiSomma go.

I says to him, how come you guys trying to get a union in, and you're getting all the benefits that everybody else is getting, and the raises that go along, and he just said well, you know, and he took off. And that was the discussion.

JUDGE LIPTON: He said something, he just took off?

THE WITNESS: He just said, you know, and he took off.

Q Did you have any further discussions during that week with Mr. Louis Leonardi concerning Local 447?

A Maybe out of curiosity --

JUDGE LIPTON: You can strike that. Leave out your curiosity.

You're asked to testify what you said. Don't say anything but what you said to Mr. Leonardi.

What did you say?

THE WITNESS: I don't recall.

Q Did you ever threaten Mr. Leonardi with discharge?

A No.

JUDGE LIPTON: Now, this is a legal question, what constitutes a threat. There's no objection it may remain. It's what is said which is important.

MRS. KAVE: I'll object.

JUDGE LIPTON: As far as drawing inferences as to whether it constitutes a threat.

MRS. KAVE: I will object to that question.

JUDGE LIPTON: His answer may remain.

Q (By Mr. Donelan) Did you ever say to Mr. Louis Leonardi that he will be let go because of any union activity?

A No.

Q Was Mr. Leonardi working on the day or night crew, Mr. Francis?

A On the night crew.

Q And were you present at night when Mr. Leonardi was working as an employee of Grand?

A No, not all night.

Q Were you there for part of the time that he was working?

A Well, not really, because when he came in, we were tying up, but I had a lot of paper work to do and what not, get things ready for the next day.

Q Could you tell us how work -- withdraw that.

Was work assigned to Mr. Leonardi on a daily basis?

A Yes.

Q And could you tell us the procedure by which work was assigned to him?

A We would write up on the blackboard what to do that night.

Q Now, prior to July 26, 1973, Mr. Francis, was that the same procedure that was in effect that you just testified

to?

A Prior --

Q Prior to July 26th?

A Well, most of the time was taken up with the boggies before that --

Q That's not my question.

My question was, prior to July 26th, did you also use the blackboard to assign work?

A Yes.

Q Did that procedure continue after July 26th?

A Yes.

Q Now, prior to July 26th, did you have occasion to observe the quantity or the quality of the work that Mr. Leonardi was performing?

A Yes.

Q Could you tell us in what manner you observed the quantity or quality of the work that he was --

JUDGE LIPTON: Let me interject here. Are you concluded with your question?

MR. DONELAN: Yes.

JUDGE LIPTON: Is Respondant relying upon incompetency, failure of quality on the part of any of these alleged discriminaties as a reason for the discharge?

MR. DONELAN: I'm sorry, sir, I didn't quite hear your question.

JUDGE LIPTON: Does Respondant rely upon incompetency, failure of quality on the part of anyone of these six alleged discriminaties as a reason for the discharge?

MR. DONELAN: Yes, sir.

JUDGE LIPTON: All right.

Go ahead.

Q (By Mr. Donelan) I believe the question was, Mr. Francis, if you could tell us the manner in which you observed the quantity or quality of the work that had been done by Mr. Leonardi prior to July 26th?

A He was told -- he did what he was told.

Q Excuse me?

A He did what he was told.

Q You didn't have any complaints with his work prior to that time?

JUDGE LIPTON: You are leading the witness.

MR. DONELAN: Excuse me, sir.

A No, no, he did what he was told.

Q Now, after July 26th, did you have any occasion to observe the quantity or quality of Mr. Louis Leonardi's work?

A Yes.

Q Would you tell us on what occasion or occassions you observed it or how you observed it?

A Yes. Well, the problem was that we had things written

on the blackboard that never got to. Before they always were done. And he was slacking off.

JUDGE LIPTON: Did you observe him slacking off?

THE WITNESS: I wasn't there at the time.

JUDGE LIPTON: You are just --

THE WITNESS: I can gage by what he did.

JUDGE LIPTON: You gaged the quantity of work from what you put on the blackboard?

THE WITNESS: Right.

JUDGE LIPTON: All right.

Q (By Mr. Donelan) Now, Did therecome a time when Mr. Louis Leonardi was let go as an employee?

A Yes.

Q And would you tell us what date that was, Mr. Francis?

A August 2nd, 1973.

Q Did you personally speak to Mr. Leonardi on that day concerning his discharge?

A Yes.

Q And was there anyone else present besides yourself and Mr. Leonardi?

A I don't think so.

Q And culd you tell us where you had discussion with Mr. Leonardi?

A At the back of the plant.

Q Could you tell us what you said to Mr. Leonardi at that time?

A I told him sorry, things are getting slow, I have to let you go.

Q Have you ever discussed with Mr. Leonardit the quantity or quality of his work after July 26th?

A I mentioned to him a few times that things were not getting done and he just said, well, you know, it takes that kind of time to do it.

Q Did he say anything further to you?

A No.

Q Now, at the time that you spoke to Mr. Leonardi on August 2nd, did he say anything to you at the time you told him he was being let go?

A I think he said that's the breaks and he took off.

Q Was there any discussion -- was there any mention in that discussion you had with Mr. Leonardi of any union?

A No.

Q Do you know Mr. Peter Leonardi?

A Yes, I do.

Q And could you tell us by whom Mr. Peter Leonardi was employed in 1973?

A Clearview Concrete Pipe.

Q And would you be kind enough to describe for us the type of work that he was performing in the spring and summer

of 1973?

A Most of Pete's time was taken up on the boggies scraping them down, painting them up, getting them ready for the road.

Q I presume when you refer to the boggies, you are refefring to the same boggies --

A After these other guys fabricated them, he had to paint them and grease them, get them to look decent for the road.

Q Did you ever have any discussions with Mr. Peter Leonardi concerning or relative to Local 447, District 15 of the Machinists?

A No.

Q Did Mr. Louis Leonardi work at night also?

A Yes.

MR. DONELAN: I'll withdraw the question.

MRS. KAVE: Are we talking about Louis or Peter?

MR. DONELAN: Forgive me, Peter Leonardi, excuse me.

Q (By Mr. Donelan) Mr. Francis, you testified that there was a certain procedure used to assign work to Mr. Louis Leonardi.

Could you tell us whether or not that same procedure or different procedure was used to assign work to Mr. Peter Leonardi?

A Well, Peter Leonardi once in a while would put up

to grease a machine or he had a regualr pattern to follow. He's suppose to do one machine a night.

And when I would question him, the next morning if he did it, he would say he didn't have time to get to it.

Q Now, prior to July 26th, Mr. Francis, when you came in to work the next morning, did you check the machine which Mr. Leonardi was to have worked on the night before?

A Yes.

Q And did you observe whether or not he had performed his work?

A Yes. He did what he was told.

JUDGE LIPTON: What was the answer?

THE WITNESS: Yes, he did what he was told.

Q Now, after July 26 of 1973, Mr. Francis, did you have occasion to examine any of the equipment at the Clearview Plant which Mr. Peter Leonardi was would have worked on on a prior evening?

A Yes. I asked him how come he didn't get this truck or something like that, well, he said I didn't have no time.

Q My question was, did you have occasion to look at some piece of equipment that he was would have worked on?

A Yes.

Q And could you tell us what he observed on any occasion with respect to any of this equipment which he

was would have worked on?

A Well, the equipment that he was suppose to be greasing I looked at, and they weren't being done and I asked him how come they weren't being done.

Q And what did he say to you?

A He didn't have time to get to them.

JUDGE LIPTON: Many of these questions are leading in character. There's a very simple way of getting the answer. In what manner did you observe the work of Mr. Peter Leonardi after July 26th, and let the witness describe it.

MR. DONELAN: I will adopt that as my question, Your Honor.

JUDGE LIPTON: You've already asked him these questions and I've indicated a number of times about your leading questions.

Q (By Mr. Donelan) Did you discuss with Mr. Peter Leonardi the quantity or quality of his work after July 26th?

A Yes.

Q Could you tell us what you said to Mr. Leonardi?

A How come this stuff is not being greased.

Q And what did Mr. Mr. Leonardi say?

A He said I didn't have time to get to ti.

Q Had you encountered similar problems with Mr. Leonardi's work prior to July 26th?

A No.

Q Did you ever tell Mr. Leonardi or say to Mr. Leonardi that he would be discharged or fired because of any union membership?

A No.

Q Do you know Mr. George Bartoli?

A Yes, I do.

Q And could you tell us by whom Mr. Bartoli was employed in 1973?

A Clearview Concrete Pipe.

Q And would you please describe the type of work that Mr. Bartoli was performing in the spring and summer of 1973?

A George Bartoli worked on the machines and also worked on the boggies at this time.

Q Would you tell us what type of work he was performing on boggies?

A He was welding and Fabricating parts for the boggies.

Q And could you tell us how much of his time was spent working on the boggies?

A Roughly half of the time.

Q Did you ever have any discussions at any time with Mr. Bartoli relative to a union known as Local 447, District 15 of the Machinists?

A Yes.

Q Would you tell us when you had such a discussion or if there were more than one different dates you had such discussions?

A Well, a few discussions after I let the first two guys go. It was that week of July 13th. I talked to him about it.

Q And could you tell us what you said to Mr. Bartoli?

A Just, you know, out of curiosity, why they would want to get a union in when they were getting all the benefits that everybody else was getting.

JUDGE LIPTON: Strike curiosity. Just testify as to what you said.

Q Whatdid Mr. Bartoli say to you at that time, Mr. Francis?

A He said that the rest of them signed up so he went along with them.

Q Did you at that time or any time ever say to Mr. Bartoli that he would be fired or discharged because he joined the union?

A No.

Q Mr. Bartoli working on the day or night shift?

A Day.

Q And could you describe for us, Mr. Francis, the quantity or quality of the work that was done by Mr. Bartoli prior to July 26 of 1973?

A His work was -- he done what he was told, and he was -- what I was doing with him is giving him most of the overtime to make up the time -- the fill in, not to hire another mechanic.

JUDGE LOPTON: Well, that's not responsive.

Don't volunteer anything. Just answer the question.

THE WITNESS: Okay.

Q Now, after July 26th of 1973, could you describe for us, Mr. Francis, the quantity or the quality of the work that Mr. Bartoli was performing after that date?

A Well, we seemed to have a problem. Monahan kept coming into me, which is my foreman, Thomas Monahan, complaing about George taking too long to do this, and too long to do that, and all these jobs he was observing him saying that these jobs are taking too long.

So I went out and talked to George. I says George, you know, what's going on. He says well, you know, it takes time to do these jobs.

Q Was anything further said at that discussion, Mr. Francis?

A I said, you know, hustle it up a little bit we're losing money on this because we're not getting production out.

Q Had you had any problems with the quantity or quality of Mr. Bartoli's work prior to July 26th?

A No.

MRS. KAVE: Objection. It's been asked and answered.

JUDGE LIPTON: I'll sustain it.

Q Now, did there come a time when Mr. Bartoli was let go as an employee of Clearview?

A Yes.

Q And could you tell us the date of that?

A That was August 8th.

Q 1973?

A Yes.

Q Could you tell us, did you speak to Mr. Bartoli on that date?

A Yes.

Q Would you tell us where you had the discussion with Mr. Bartoli?

A Somewhere in the plant. I don't recall if it was the front or the back.

Q Do you recollect what you said to Mr. Bartoli?

A I told him George, things aregetting slow, I have to let you go.

Q Did you say anything to Mr. Bartoli about Local 447 or District 15?

A No.

Q Did Mr. Bartoli say anything to you when you told him that you were letting him go?

A Nothing.

Q Did he say anything about Local 447 or District 15 during that conversation that you had?

A No.

Q Do you know Mr. Earl Nare?

A Yes, I do.

Q Would you tell us by whom Mr. Nare was employed in 1973?

A Clearview Concrete Pipe.

Q And again, would you describe for us the type of work that Mr. Nare was performing in the spring and summer of 1973?

A He was working on the machines and on the boggies during that time.

Q Would you tell us what type of work he was performing on boggies?

A He was making up the electric lines and the air lines on the boggies.

Q And could you tell us how much of his total time was spent working on the boggies?

A Approximately half of the time.

Q Did you ever have discussions at any time with Mr. Nare relative to union known as Local 447, District 15 of the Machinists?

A Yes.

Q And would you be kind enough to tell us when you had such discussions with Mr. Nare?

A This was after Winfield and DiSomma was let go. I ask him how come they want to get a union in and he gave me the same answers as the other guys.

Q At that time, or at any time, Mr. Francis, did you ever say to Mr. Nare that he would be fired or discharged?

A No.

Q Could you describe for us, Mr. Francis, the quantity or quality of the work that Mr. Nare performed prior to July 26, 1973?

A He did everything he was told.

Q After July 26, Mr. Francis, July 26, 1973, could you describe for us the quantity or quality of the work that Mr. Nare performed at that time?

A He was slowing up on all the jobs he was doing, and I went over to him and says, Earl you better shape up, we're going to have a problem. So he just looked at me, and he smiled, and went along his merry way.

Q Do you have any recollection of any particular incidents or --

A Yes, there was a few.

Q Would you relate to us these incidents as you remember them?

A Sure. On one occasion Monahan told him to fix the

the 400 it wasn't running.

JUDGE LIPTON: Were you there when he told him?

THE WITNESS: Yes. I was in the back room. And he starting throwing his tools all around and saying, oh, I'll get to it when I can, I'm busy. This was a direct order, and go to it, and he wanted to do what he wanted to do.

Another forinstance was the same machine a day or so later had a flat on it, and where it usually took him about a half hour to do it, it took him over an hour and a half to do it.

Q (By Mr. Donelan) All right.

A Then another day I went back there, and they had the 120 laying on the said there with a couple of hydrolic hoses broken, and Earl is going along cleaning the floor, sweeping the floor and whistling.

I says Earl, "You don't get paid to sweep the floor. I have laborers to do that; fix the machine, I'm losing money." He looked at me and he laughed. So --

Q Did he say anything to you?

A No. He just laughed.

JUDGE LIPTON: These are all after July 26th?

THE WITNESS: Yes.

Q (By Mr. Donelan) Mr. Francis, did you -- are you the one that spoke to Mr. Nare at the time he was let go?

A Yes.

Q And would you tell us on what date that occurred?
A August 8th.
Q Wouls you tell us where it occurred?
A Somewhere in the plant. I guess near the rear of the plant where he works.
Q Would you tell us what you said to Mr. Nare at that time?
A I said, things are getting slow, I have to let you go.
Q Had you ever discussed with Mr. Nare after July 26th the quantity or quality of his work?
MRS. KAVE: Objection. I believe that's been asked and answered already.
A Yes.
JUDGE LIPTON: I believe he certainly covered it. He wien into incidents -- is this in addition to what you convered before?
MR. DONELAN: No. I'll withdraw the question, Your Honor.
Q (By Donelan) I'm sorry, was there anyone else present at the time that you spoke to Mr. Nare on August 8th?
A I don't think so.
Q And when you told Mr. Nare he was being let go, did he say anything to you?
A Just smiled and walked away.

Q Was there any discussions -- was there anything said by either yourself or Mr. Nare at that time about a union known as Local 447?

A At the time I laid him off?

Q Yes.

A No.

Q Mr. Francis, are you still the plant superintendent at Clearview?

A Yes, I am.

Q And have you been the plant superintendent since August continuously since August of '73?

A Yes.

Q And could you tell us the number of men that they presently use for maintenance crew?

A We are back to our normal two men.

Q And --

JUDGE LIPTON: You can strike back to normal. The answer is two men. The question is how many.

Q Could you tell us how many men you've had operating at any one time as maintenance crew since August 8th of 1973?

A Would you say that again?

Q Yes.

Since August 8th of 1973, how many men have you had working as a maintenance crew?

A Two men.

MR. DONELAN: Excuse me for a minute.

I have no further questions of Mr. Francis.

MRS. KAVE: Your Honor, might I have a five minute recess?

JUDGE LIPTON: Yes.

We'll have a short recess for about five minutes.

(Recess taken.)

JUDGE LIPTON: Back on the record.

CROSS-EXAMINATION

BY MRS. KAVE:

Q Mr. Francis, how long have you been working for Clearview?

A Eleven or twelve years.

Q Prior to this last layoff of the six men have you ever had to lay off for lack of work men in the maintenance department?

A Yes.

Q And how are they normally laid off, by seniority?

A By seniority.

Q Now, the first man that you laid off was Mr. DiSomma; is that correct?

A Right.

Q Did Mr. DiSomma have the least seniority?

A In the maintenance, yes.

Q What type of work was Mr. Gomez doing?

A Mr. Gomez was going to be a laborer.

Q He was going to be a laborer?

A Yes.

Q Who was he working with at the time when Mr. DiSomma was laid off?

A Who was he working with?

Q Yes.

A With DiSomma.

Q What type of work was he doing at the time Mr. DiSomma was laid off?

A Half laborer and half maintenance. We use him for clean up at night, which we never use the maintenance for.

Q Was he doing any work --

A I have laborers doing welding work at all times.

Q So he wasn't working with Mr. DiSomma and welding; is that correct?

A He was.

Q How long had Mr. Gomez been working for the company?

A Four, five months.

Q How long had Mr. DiSomma been working for the company?

A On and off?

Q Well --

AAnd off.

Q Did Mr. DiSomma work on and off?

A He was out for about three months, around Christmas time.

Q Was he out for any particular reason?

A He got hurt.

Q On the job?

A Yes.

Q So he was out on disability?

A Yes. We didn't replace him with anybody.

Q But he had been working for the company for about a year?

A Roughly.

Q Well, how come you didn't lay Mr. Gomez off before you laid off Mr. DiSomma?

A Because we didn't use Gomez as a laborer. I couldn't take Sal and put him on welding wire because that is considered a laborer's job.

Q Welding wire?

A Yes. Gomez, we were going to break in as welding wire.

Q Did Mr. Gomez know how to weld at all at the time he was hired?

A Yes.

Q He did?

A Yes.

Q How good a welder was he?

A He got by.

Q Was he as good as Mr. DiSomma?

A NO.

Q Was Mr. DiSomma teaching him how to weld?

A Teaching him?

Q Yes, in certain respect.

A No.

JUDGE LIPTON: Mr. Witness, would you take away from your mouth because you're interfering with the audibility.

Q You didn't lay off Mr. DiSomma because you had any problems with his work?

A No. It was lack of work.

Q How come you didn't recall Mr. DiSomma before you hired somebody new?

A On -- I didn't hire no welders.

Q Well, you testified that you hired two new people into your maintenance department?

A Mechanics.

Q So then there's no longer any welding needed to be done in the company?

A Nothing that my laborers can't take care. We've done -- can I explain one thing to you.

We've ran the company when Earl was there as one

mechanic with no welders. The laborers always pitched in and did the odd jobs.

Q Well, you testified that in in the end of spring and the beginning of the summer the men were working on beggies?

A Fabricating. This is something we don't usually do.

Q And, well what did Mr. DiSomma work on before the beggies?

A We had six other boggies.

Q The entire time Mr. DiSomma was employed by Clearview he was working on boggies?

A He did odds and ends before that.

Q I would like you to be more specific about his odds and ends?

A He welded some rings that were broken. These were -- you don't see the whole picture.

Back a year before I let them go we was -- got this new job that was suppose to start immediately, which didn't start immediately. It was postponed like six months. Right. So I could have let them go, and tell them to come back in six months.

So we let off on changing the boggies, okay. We first started on the first six boggies we had. We switched them because we knew what size they were going to be. We fabricated the top of them. Then he got hurt and he went away

for three months.

I didn't replace him with anyone. He came back, and we started getting in a hurry because these other boggies came in from Ohio, so they had to be done from the beginning.

Q Was Mr. Gomez hired at the time when Mr. DiSomma was out?

A No.

Q When was Mr. Gomez hired exactly?

A Exactly I couldn't tell you. I don't have a date.

Q Did you discuss laying off of Mr. DiSomma with anyone before you laid him off?

A No. I knew what was coming up, that there was no work --

JUDGE LIPTON: Your answer is no?

THE WITNESS: No fabricating work coming in.

JUDGE LIPTON: The fact is did you discuss this with anyone?

Is your answer no?

THE WITNESS: No.

Q You didn't discuss it with Mr. DeLillo?

A No.

Q What about Mr. Carbone, what type of work does this Carbone do?

A Laborer, he does welding. as I said before, we worked ten years without a welder actually, a welder. Because

we never fabricated before. We have laborers doing welding work which are covered by the laborers.

We've always had. We didn't change nothing.

Q Then you have maintenance men that are doing welding work too?

A Fabricating and that stuff. Then if we get in a jam I have them do that. There's nothing wrong with that. As long as the laborers don't argue about it. You follow what I mean? They've been doing it since we started the plant.

Q What kind of work was Mr. Winfield doing?

A Winfield was doing mechanical work, preparing these boggies --

Q Before the boggies what type of work was Mr. Winfield doing?

A Catching up on odds and ends, work that we had.

Q I'd like you to be more specific than that?

A Well, let's see, he started like -- truthfully he came in through the office, I really didn't need him.

Q I didn't ask you that.

MRS. KAVE: I ask that the answer be stricken, Your Honor.

JUDGE LIPTON: Yes.

What do you mean by odds and ends, you've been using that term. What are odds and ends?

Q You make it sound like these men didn't do any work before they worked on the boggies?

A I didn't say that.

Q What kind of work were they doing before they worked on the beggies?

JUDGE LIPTON: This relates to all the men or just Mr. Winfield?

MRS. KAVE: Mr. Winfield specifically.

A There was jobs to be done around the plant which took a little mechanical know how.

Q Well, how long had Mr. Winfield been working for the company at the time of his discharge?

A About a year.

Q And you testified that they were working on boggies in the spring and the summer?

A Yes.

Q And you say that he was only doing odds and ends prior to the spring.

He didn't work the full eight hours?

A He worked a full eight hours.

Q What exactly was he doing?

Was he repairing trucks?

Was he repairing fork lifts?

JUDGE LIPTON: Hold it. That's a compounded question.

There were certain regular maintenace duties to be done; weren't there?

THE WITNESS: Regular --

JUDGE LIPTON: Regular maintenance duties to be done --

THE WITNESS: By John Winfield or --

JUDGE LIPTON: In the plant?

THE WITNESS: By the whole crew?

JUDGE LIPTON: By the maintenance crew.

THE WITNESS: The regular duties, the two men could have handled the regular duties.

JUDGE LIPTON: You're not answering my questions.

Were there regular maintenance duties to be done by the regular maintenance crew?

THE WITNESS: You see it's phrased wrong. He mostly worked --

JUDGE LIPTON: You can answer that yes or no.

THE WITNESS: Oh, yes or no. Could you say it again.

JUDGE LIPTON: Was there regular maintenance work to be done in the plant by a maintenance crew or by anybody else?

THE WITNESS: The answer to that has to be yes.

JUDGE LIPTON: All right.

THE WITNESS: The way it's phrased.

JUDGE LIPTON: Was Mr. Winfield doing any of that regular maintenance work before the boggies?

THE WITNESS: Excuse me, sir, when you say regular, do you mean a routine, something that has to be done every-day or every week, every month or --

JUDGE LIPTON: You answer it yourself.

How often was maintenance work done, whether daily or several times a week?

You describe it yourself?

THE WITNESS: John Winfield, okay, had -- like if we had a motor go down, I had him steam clean the engine and put the engine out and at that time we had a whole bunch of machines that were in bad shape so we tried to get them fixed.

Q (By Mrs. Kave) Prior to working on the boggies, did you have a full eight hours work for John Winfield?

A Yes.

Q Could you please take your hand away from your mouth.

A At that period, though.

Q Does Mr. Carbone do that type of work, maintaining machines that break down?

A No.

Q Does Mr. Gomez?

A He's not there.

Q Well, when he was there, did Mr. Gomez do that type of work?

A No.

Q I'm a little bit confused about Mr. Gomez's functions. What exactly --

A Mr. Gomez's functions at the time, we're talking about the time --

Q At the time when Mr. DiSomma and Mr. Winfield were laid off in July.

A He was going to be switched to being a laborer.

Q What was he hired to do?

What was he doing in July?

A In July, we were falling behind on the boggies so I threw him in there to help them.

Q What as he doing prior to the boggies?

A When he came in he went right on the boggies.

Q So you hired him to work on the boggies?

A Too.

Q Too. So why wasn't he laid off before --

A He wanted to be a laborer. He took the option that he would go as a laborer.

Q Did you ask Mr. DiSomma if he wanted to work as a laborer before you laid him off?

A I knew he wouldn't go as a laborer.

JUDGE LIPTON: You can answer the question.

You either asked him or you did not ask him.

THE WITNESS: I did not ask him.

JUDGE LIPTON: Try to concentrate on the question

and answer only the question.

Q Did you ask John Windield if he was interested in becoming a laborer?

A No.

Q Exactly what date did you speak to Mr. DeLillo when he showed you the letter from the union?

A The actual date?

Q Yes.

A Can I answer I don't know if it was one day or the other.

Q Yes, if that's the truth.

A That's the truth. I don't remember if it was a Monday or Tuesday.

Q But it was a Monday or Tuesday following the Thursday when you let the first two men off?

A Right. I don't recall -- it was --

Q Prior to the day you saw that letter did you know anything about the men being involved with the union?

A No.

JUDGE LIPTON: What's the answer?

THE WITNESS: No.

Q Well, didn't you testify that at the time when one of the first two men were laid off one of them did mention a union?

A I didn't even -- I said what union, I don't even

know if he said a union. I just walked away from him.

Q Well, you testified --

A That's what you mean?

Q You testified --

JUDGE LIPTON: What he testified is all right in the record.

A If you refresh my memory that way, yes, what Sal said to me, but I didn't actually know about it. He mentioned it, you know.

Q What did Sal say to you?

A He said something similar to we're getting laid off because of the union. And you just walked away. I didn't ask what number, this or that.

Q When Mr. Winfield was discharged, what did you say to him?

A Sorry, lack of work, I have to let you go.

Q Now, was there anyone else present when you laid Mr. Winfield off?

A I don't believe so. I didn't look around, take notice of whose there. I mean I go by 100 people a day.

Q Did Mr. Winfield --

A Am I suppose to record this, that I knew something was going to happen?

I hadn't the faintest idea anything was going to happen.

MRS. KAVE: Your Honor, may I ask you to instruct the witness to answer the question.

JUSGE LIPTON: Just answer the question.

THE WITNESS: Yes.

JUDGE LIPTON: Was there anybody else present. I don't recall, there was or there wasn't.

THE WITNESS: I don't recall.

JUDGE LIPTON: Your answer is you don't recall?

THE WITNESS: I don't recall. Which is true.

JUDGE LIPTON: That's all you need to say.

Q (By Mrs. Kave) Do you recall Mr. Nare being present?

A He wasn't. He was off to the side. That I know.

Q Was he within hearing distance, do you know?

A I doubt it because he never hears what you tell him anyway. No, I don't think so.

Q What did Mr. Winfield do when he was told that he was laid off?

A He ran over to Earl, okay, and I start walking towards them. And I could hear Winfield say to Earl, I told you something was going to happen and Earl said don't worry about it, I'll have you back that week.

Q Did you inquire what they were talking about?

A No. I didn't bother.

Q So it's correct that Mr. Winfield ran over to Mr. Nare

and that Mr. DiSomma said I'm being laid off because of the union?

A Yes.

Q But, you still stand on your testimony that you did not know that the men were involved with the union until Mr. DeLillo told you about the letter?

A Well, no. Like I knew there was something going on but I didn't know what number or local or what union, whatever you want to say. In that sense --

Q You knew there was something going on with the union?

A After I let those two guys go, sure.

Q After Mr. DeLillo showed you the letter, you started questioning the men about the union?

A Right.

Q But before when you heard the men mention the union you didn't question any of them about the union?

A At the time I laid them off?

Q Right.

A No.

Q You didn't ask anyone else about the union?

A No.

Q Who was the first person that you asked about the union?

A I believe it was Louis Leonardi.

Q Now, you testified that you heard about the letter

from the union from Mr. DeLillo on a Monday or a Tuesday following the week-end that the first two men were discharged. Now, as soon as you heard about the union from Mr. DeLillo did you question Mr. Louis Leonardi? The same day?

A Possibly. I don't recall.

Q Where did you speak to Mr. Louis Leonardi about the union?

A In my office.

Q What time of day was it?

A Four, four:thirty.

Q And what exactly did you say to Mr. Leonardi?

A I says what's this with the union, how come you guys trying to get a union in, when you're getting all the benefits that everybody gets and the raises and everything, and vacations, and holidays. He says, you know, he didn't say nothing.

Q I didn't get his response exactly.

What was his response?

A Well, "You know". Whatever that meant.

Q Did you ever ask him anything further?

A No.

Q Did you ask him about the union only on one occasion?

A I don't recall really. You know, I didn't keep track of it.

Q Did you ask him about the union every night until he was discharged?

A No.

Q Well, how many times did you ask him about the union?

A Once I'm sure of. Maybe twice. Possibly I'm not sure.

Q It's important. Did you ask him about the union twice?

A It's quite a while.

JUDGE LIPTON: If you don't recall simply testify you don't recall.

THE WITNESS: I don't recall.

Q What about his brother, did you ever ask his brother about the union?

A The one day that I talked to him about it, the both of them were together and he just smiled.

Q When you asked Louis Leonardi about the union and he replied yes, did Peter Leonardi say anything?

A No. Not that I recall.

Q How come you didn't ask Peter?

A Because Peter never did say much. I always talked to Lou.

Q Now, how long was Louis Leonardi working for the company?

A Louis?

Q Yes. Louis.

A Roughly two years, I would say.

Q And you testified that prior to July 26th, you never had any complaints about his work in two years?

A You know, we had complaints but not major complaints, you know. He was -- he would straighten out -- odds and end complaints, you always have that.

Q Your favorite phrase is odds and ends?

A Yes. Because --

Q I like you to be a little bit more --

JUDGE LIPTON: Both of you can't talk at the same time and you're getting a little argumentative.

Q Well, could you be a little bit more specific about the type of complaints that you had about Louis Leonardi's work?

A When?

Q Prior to July 26th.

A Nothing major. He did what he was told to do or else he wouldn't have been there that long.

Q You said you had a complaint about his work. You can't recall any complaints prior to July 26th?

A There's always complaints with everyone. I mean --

Q Did he always --

A I'm sure that your boss says something to you once

in a while --

MRS. KAVE: I move thatthe answer --

JUDGE LIPTON: It may be stricken.

Will you concentrate on question and answer only the question and nothing more.

THE WITNESS: Yes.

JUDGE LIPTON: You did affirmatively testify that there were complaints before July 26th.

Do you recall what those complaints were?

THE WITNESS: No. Minor complaints.

JUDGE LIPTON: You recall they were minor but --

THE WITNESS: They had to be minor --

JUDGE LIPTON: Do you recall what they were?

THE WITNESS: No.

JUDGE LIPTON: YOur answer is you don't recall. But you do recall there were complaints?

THE WITNESS: Yes.

Q (By Mrs. Kave) Now, you testified that you put the work assignments for the Leonardis' on the blackboard?

A Yes.

Q And that they did not complete the work on the blackboard?

A Right.

Q Well, prior to July 26th, were there ever any days when they did not complete all the work on the blackboard?

A You see you have to rephrase that because it's leading up to --

JUDGE LIPTON: You may answer the question. It's very clear.

THE WITNESS: There's an answer with an explanation.

JUDGE LIPTON: Go ahead.

Did you have occasions before July 26th, when work on the blackboard was not done.

A All of it not done?

Q Yes.

When all the work assigned --

A Yes.

Q Are there any production records kept of the work that the maintenance department is doing?

A They were suppose to keep a record which they never did.

Q So is the answer yes or no?

A No.

Q There are no records --

A Through their fault. And I've been after them for a long time to do it.

Q Now, what did you tell Mr. Leonardi at the time Louis Leonardi -- at the time he was discharged?

A Sorry things are getting slow, I have to let you go.

Q Is that the reason you let him go?

A That's what I say to everyone. That's my -- I hire and fire enough people a year to know that this is the best way, not to have any problems.

JUDGE LIPTON: Don't explain that. The question is what did you say and you just testified what you said..

MRS. KAVE: And I move that the rest of the answer be stricken, Your Honor.

JUDGE LIPTON: The rest of the answer may be stricken. Only in response to what was said. to the question as to what was said.

Q (By Mrs. Kave) Did you ever speak to Louis Leonardi before you discharged him about him not completing his work?

A Yes.

Q When did you speak to him?

A What date, what hour?

Q Yes.

Well, he was discharged on August 2nd, if that gives you any relationship of time?

A When he would come in at night, I would say to him how come that wasn't done last night and this wasn't done last night. He said he didn't have no time. And how soon it put so long to put a blade in a mixer. He said well, that's how long it took.

Q Prior to July 26th, did you ever have occasion to

ask him why he didn't complete a job?

A You more or less just asked that question before.

Q Well, I'm asking it again.

A They weren't as frequent as they were in that last week.

Q How long had he been working for you?

A About two years.

Q Had you ever indicated to him that you were -- if he didn't shape up you were going to let him go?

A You mean threaten him?

Q Indicate to him that you --

A I don't --

Q Answer my question, please?

A What's the question again?

Q I asked you if prior to letting him go did you ever give him a warning indicating to him that you would let him go unless his worked shaped up?

A No.

Q Now, Peter Leonardi, how long was Peter Leonardi working for the company?

A About a year.

Q And he was working on boggies solely?

A Most of the time.

Q Was that for the entire year that he was working for the company?

A No.

Q What was he doing before?

A Well, we primarily brought him into clean up all the machines, steam clean them and get them ready for the -- and get them back into shape where we could let them be presentable.

Q Is that an on going job?

A No.

Q Well, did you --

A No one did it before.

Q Did you indicate to him at the time he was hired that the job was limited?

A We never do that, I'm sorry. We don't do that.

Q Now, why was Mr. Peter Leonardi laid off?

A Why was he laid off?

Q Yes. Why?

A Because they were slacking off doing their work.

Q Well, what exactly -- what exactly were the jobs that Peter Leonardi failed to do?

A He failed to grease some trucks that we told him to grease.

Q Well, did he ever fail to do a job prior to July 26th?

A It's not a fair question.

Q I didn't ask you whether it was a fair question. I asked you if he ever failed to do a job prior to July 26th.

JUDGE LIPTON: You have to answer the question, Mr. Witness.

THE WITNESS: It's just a straight yes or no answer, sir.

JUDGE LIPTON: If you recall the answer -- there's a long pause here. You have to testify --

THE WITNESS: I would imagine so.

JUDGE LIPTON: You would imagine.

Do you have any recollection?

THE WITNESS: I assume so.

JUDGE LIPTON: You don't --

THE WITNESS: Yes. Something -- none of one getting everything done what they plan to do.

Q (By Mrs. Kave) Right.

We'll leave it at that.

A That's an unfair question.

Q Now, Mr. Bartoli, how long was Mr. Bartoli employed by the company?

A About two and a half years.

Q And up until July 26th, how would you characterize his work?

A He did what he was told.

Q Was he a very good worker?

A Yes.

Q What type of work was Mr. Bartoli doing?

A He was doing maintenance work.

Q Which consists of --

A And working on boggies. All around.

Q Obviously he had been working for the company for a long time so --

A He did more than beggies, right.

Q Could you give me some specific examples of other kind of work Mr. Bartoli did besides working on Boggies?

A He worked on the trucks. He fixed the trucks, clutches and hysters and things like that.

Q Does the company still have trucks?

A Do they still have trucks, yes.

Q Now, did you ever speak to Mr. Bartolie about the union?

A Did I ever speak to him, sure.

Q Well, can you remember the first time you spoke to Mr. Bartoli about the union?

A Do I remember the first time, no. I can't remember.

Q Can you recall how long after you heard about the letter from the union. from DeLillo. that you spoke to Mr. Bartoli?

A Within that same area when I saw the letter.

Q The same day?

A Probably.

Q And what did you say to Mr. Bartoli?

A What did I say to him?

Q Yes.

A What did I say to him, I says to him, "George, I hear you guys are trying to get a union in". He looked up and he says, "Yes". I says, "How come if you guys getting all the benefits anyway." He says, "The other guys wanted it" so he went along with them and signed the card.

So then I said something else. I says --

Q When you said something else, what exactly did you say to him?

A I said,"I'm surprised, you know, you guys didn't tell me anything about it." He said, "Listen, o me a favor, Dave, please leave me out and don't talk to me about it anymore." I never --

Q You only questioned him about it on one occasion?

A I believe so.

Q You never questioned him about it again?

Now, did Mr. Bartoli ever work overtime?

A He did quite a bit of overtime work before this happened. As I said before we try to have him fill in the time that we would have to do to get another guy.

Q So you really needed another maintenance man?

A Up until we fabricated.

Q Did he ever work overtime before you started fabricating the boggies?

A Yes. Because he was a true mechanic, he knew --

Q Because you needed another man?

A No. Because he was a true mechanic, that's the word.

Q How many hours a week did he work overtime, Mr. Bartoli?

A I gave him as much time as I could because he was like I say a true mechanic, we you don't have many of in this room.

Q Can you give me some idea of how many hours a week overtime he worked?

A On the average, I'd say ten to 12 hours overtime.

Q At time and a half?

A Yes, why not.

Q Do you know what he was being paid?

A What was his salary, his rate?

Q Yes.

A Must have been 525 or something like that. I get the numbers mixed up with other people. Somewhere in that area.

Q I just want to make sure I have it straight.

Prior to working on the boggies Mr. Bartoli used to work ten to 12 hours a week overtime?

A No. At the time we were working on boggies.

Q Well, prior to the time you started working on boggies

did you ever work overtime?

A Yes. Not as much overtime.

Q Could you give me some idea of how much overtime?

A He always worked on a Saturday. He worked on Saturday because there's stuff he couldn't do during the week while the men were working and the other men couldn't do it, the night crew.

Q Did he work regularly --

JUDGE LIPTON: The question is simply, if you know, Mr. Witness, how much overtime did he work before he worked on the boggies?

You can answer that?

THE WITNESS: Yes or no?

JUDGE LIPTON: You can answer that if you know. If you don't know you say you don't know.

THE WITNESS: Well, I don't recall. I don't know.

Q (By Mrs. Kave) Mr. Bartoli work during his vacation, this summer?

A He took a week off and he saw that we might get in a jam so he came in the other week.

Q Do you remember what month during the summer that was?

A That he took off?

Q Yes.

A Somewhere in July.

Q About right prior to the time you discharged him, right?

A Let's see if I recall now -- you see it's hard because he was around working on his car at the time. I don't remember now. I'll have to think about this.

JUDGE LIPTON: You don't recall exactly it was in Auguest.

THE WITNESS: What days --

JUDGE LIPTON: The record already shows his testimony as to Mr. Bartoli. When it was, the witness recalls it was in July.

Let's not persue this.

Q Was Mr. Bartoli paid double to work during his vacation?

A Yes. That was a common practice with the company.

Q And up until July 26th, Mr. Bartoli was a reliable worker?

A Yes.

Q Now, what happened after July 26th, to Mr. Bartoli's work?

A Slacked off.

Q Well, I'd like you to get a little bit more specific than the words "slacked off"? What exactly --

A Can I say something here?

Q No speeches.

JUDGE LIPTON: Just concentrate on question and answer only the question.

Q Specific examples of slacking off?

A Which I said before, Monahan kept coming over to me, repeatedly saying that things weren't being done, they were being slowed down.

JUDGE LIPTON: Did he mention Mr. Bartoli specifically?

THE WITNESS: Yes.

JUDGE LIPTON: Your question is just as to Mr. Bartoli.

MRS. KAVE: Yes, it is, Your Honor.

JUDGE LIPTON: The question is just Mr. Bartoli.

THE WITNESS: Yes.

JUDGE LIPTON: Mr. Monahan came over to you and said things were not being done?

THE WITNESS: They were taking a long time to be done, yes, and things weren't being done too.

Q (By Mrs. Kave) Did Mr. Monahan give you any specifics examples of thing that Mr. Bartoli had failed to do?

A On one occasion he came over and he said he told him to go over there and fix the pipe machine, and George just looked at him. Then I says to him go back and tell him again. And he told him, and then George went right over to the machine.

Q Well, did you speak to Mr. Bartoli directly about these

complaints from Mr. Monahan?

A In situations like this a glance is good enough. They know --

Q I asked you a question.

I asked you if you spoke to Mr. Bartoli about what Mr. Monahan said to you about his work?

A No, not really.

Q You never spoke to him about the complaints?

A Mentioned to him we got to get on the ball and get things going because it's costing us a lot of money if that's what you mean.

Q I didn't ask you that. I asked you if you ever spoke to him about the complaints from Monahan.

A I don't recall. I must have.

JUDGE LIPTON: You're under oath, Mr. Witness. You can't sit there and guess and try to pick out the answer that seems to suit you.

THE WITNESS: It's hard to recall.

JUDGE LIPTON: Then if you don't recall just testify you don't recall.

THE WITNESS: Yes,Sir.

JUDGE LIPTON: Now, the answer -- we had different answers, whether you spoke to Mr. Bartoli about the complaints of Mr. Monahan.

Did you speak to Mr. Bartoli and tell him that Mr.

Monahan made about certain specific things?

THE WITNESS: Can I take a minute to think about this.

JUDGE LIPTON: You certainly can't take a minute. If you don't recall, you can testify to that.

THE WITNESS: I don't recall.

Q (By Mr. Kave) Prior to July 26th, did you have any compalints from Mr. MONAHAN ABOUT Mr. Bartoli's work?

A No.

Q Did you have any complaints about Mr. Bartoli's work hours?

A Before --

Q July 26th, yes.

A No. He was a trusted employee. A mechanic has to be trustworthy to do his work.

Q Just answer the question, please.

JUDGE LIPTON: The answer is no.

Q Did you speak to Mr. Bartoli at all, give him any kind of warning that you were considering laying him off?

A Is this a yes or no answer too?

Q Yes, it is.

A Is that the way I have to answer it, yes or no?

JUDGE LIPTON: If you understand the question you have to answer.

A There's no explanation with the answer?

JUDGE LIPTON: If your explanation relates to the answer, relate to the question.

Q The question is --

JUDGE LIPTON: Did you say anything other than what you have already testified to to Mr. Bartoli before laying him off?

THE WITNESS: Did I say --

JUDGE LIPTON: Concerning his work?

THE WITNESS: No.

Q (By Mrs. Kave) Now, how long was Mr. Earl Nare working for the company?

A Six years.

Q And what type of work was Mr. Nare doing?

A Mechanic work. Maintenance, mechanic.

Q All right.

That's repairing fork lifts and trucks and that type of work?

A Yes.

Q Now, prior to July 26th, did you have any complaints about Mr. Nare's work?

A Yes. On and off.

Q All right.

A He got -- I took away a lot of his overtime because he was not being trustworthy when he wasn't being watched.

Q When did you take away his overtime?

A Within a few months prior to this.

Q But you had kept him on for six years, he worked under you for six years?

A I said later on. I didn't say he did this all the time. He would have went at the beginning. Near the end there he started to get, where his overtime was taken away from him because he wasn't being trustworthy anymore.

JUDGE LIPTON: Did you tell him that his overtime was being taken away from it?

THE WITNESS: He could see it.

JUDGE LIPTON: Did you tell him?

THE WITNESS: No.

JUDGE LIPTON: In what manner was he not trustworthy that you personally observed?

THE WITNESS: There was a lot of jobs that slacked off that he wasn't doing.

JUDGE LIPTON: This is before July 26th. A lot of jobs slacked off. And you observed this yourself?

THE WITNESS: Yes.

JUDGE LIPTON: Did you tell him about it?

THE WITNESS: Yes.

JUDGE LIPTON: And what did he say?

THE WITNESS: I'll try harder

JUDGE LIPTON: And that was the end of it?

THE WITNESS: Yes. He started to try harder, I

believe.

JUDGE LIPTON: Did you personally observed him?

THE WITNESS: Yes. He was doing his work.

JUDGE LIPTON: All right.

Go ahead.

Q (By Mrs. Kave) Was he doing his work at the time you laid him off on August 8th?

A No.

Q Now, after you laid off Mr. DiSomma and Mr. Winfield did you ever speak to Mr. Nare about the union?

A Yes.

Q Can you recall on how many occasions you spoke to Mr. Nare about the union?

A I can't recall.

Q Well, did you speak to him once?

A Yes.

Q And what did you say, as best as you can remember?

A I hear you guys are trying to get a local in, what local are you trying to get in.

Q And what was his response?

A I don't know. He rattled off some number or some I imagine. I don't recall really and I just looked at him and says okay.

Q Was this after you had seen the letter from Mr. DeLillo?

A Yes.

Q So then you knew what local it was?

A I wanted to see if he knew.

Q Did you ask him about the benefits?

A The benefits -- our benefits or their benefits or whose benefits?

Q Well, the same benefits that you asked the other men about, the --

A No. Because he was going haywire at the time. I didn't talk too much to him. I ignored him more or less really.

Q Well, did you ask him on more than one occasion about the union?

A I would imagine so.

Q How many times did you ask him about the union?

A I don't recall.

Q Why did you keep asking him about the union?

A Who said I kept asking him. I didn't say it. You said it.

Q You said you asked him on more than one occasion.

A I asked everyone more than one time.

JUDGE LIPTON: Pursuing your question more than one occasion you can get the specific conversations. We don't want to get into mental operations or the whys and the wherefores. We'll infer those from the record.

Q (By Mrs. Kave) Well, is it true that you spoke to Mr. Nare on more than one occasion about the union?

A More than one, yes.

Q Now, when you spoke to Mr. Nare, and you asked him what local he was involved with, where were you?

A Out where he's supposedly working.

Q Was there anyone else present?

A No.

Q The two of you were alone?

A I didn't record what's going on around me because I never thought I would have -- be questioned on this. That's like you walking in the subway, who is standing next to you.

MRS. KAVE: I move to strike the last part of the witness' answer.

JUDGE LIPTON: It may be stricken. We've been through this before, Mr. Witness. You simply recall or you don't recall. If you do recall you identify them.

Q Now, you spoke to him on more than one occasion about the union.

Can you recall anything else you asked him about the union besides the number of the local?

A I might have asked him if it was the same local he had when he worked at Certified.

Q Do you know what local he had when he was at Certified?

A No. Just curiosity, just asked him.

Q And anything else you can recall saying to him? They don't record the shaking of the head?

A Oh, no.

Q Did you ever speak to Mr. Nare about his slowing down on the job?

A It's a yes or no question again?

Q Yes.

THE WITNESS: Sir, with an explanation or not? I mean it's obvious if a man --

JUDGE LIPTON: Mr. Witness, you simply answer the question that's put to you.

Did you ever speak to Mr. Nare about slowing down on the job. And this is after July the 26th?

MRS. KAVE: Yes. That's correct, Your Honor.

THE WITNESS: Yes, sir. I told him to shape up.

Q On one occasion?

A More than one occasion with Earl, that's for sure.

JUDGE LIPTON: More than one occasion you told him to shape up?

THE WITNESS: Yes.

JUDGE LIPTON: Is that the entire conversation?

THE WITNESS: Something similar to that. I don't know the exact words.

JUDGE LIPTON: You don't have to give the exact words.

You have to give the substance, the extent of your recollection. You went over to Tom and you told him shape up?

THE WITNESS: Right.

JUDGE LIPTON: That's all you said?

THE WITNESS: More or less in those terms, you know, sir. I might have said it in a different manner.

JUDGE LIPTON: Are you guessing?

THE WITNESS: I know I said something to him in reference to his work.

JUDGE LIPTON: And you don't recall how you put it?

THE WITNESS: How I put it, no, sir.

JUDGE LIPTON: And what did he say?

THE WITNESS: He just looked and smiled and kept --

JUDGE LIPTON: He looked and smiled?

THE WITNESS: Right.

JUDGE LIPTON: All right.

(By Mrs. Kave) Prior to July 26th, did you ever tell Mr. Nare to shape up?

Oh, yes.

JUDGE LIPTON: What's the answer?

THE WITNESS: Yes.

What did you tell Mr. Nare at the time you let him go?

Did you give him a reason?

Lack of work, I got to let you go.

Q Now, how many men did you say are currently working in the maintenance department?

A Now, two men.

Q And what are their names?

A Russo, and Gagnolli.

Q Is there anyone working there by the name of Fred Montalbon?

A No.

Q Anyone working there by the name of Rick Ron?

A No.

Q Well, did anyone by those names ever work for Clearview or Grand?

A Yes.

Q And what were they working as?

What type of work were they doing?

A They were doing mechanical work, maintenance work. You want to know why they're not there now?

Q I didn't ask you.

A It figures.

Q Now, is Mr. Carbone still working for the company?

A Oh, yes.

Q And Mr. Gomez has left?

A He's gone.

Q So you have Mr. Russo and what was the other fellow's name?

A Gagnolli.

Q And Montalbon and Ron have left.

A Ross I think his name was.

Q Have you hired anybody else for the maintenance department?

A Right now?

Q Aside from the names I mentioned since July 26th?

A On one occasion I think we did hire one more guy. Who only lasted a day though because he didn't work out. We were trying to see if we could better ourselves --

JUDGE LIPTON: Just answer the question, Mr. Witness. You did hire a man he lasted a day.

Is that the only one that was not mentioned?

Q Is there anyone else that you also hired?

A On maintenance?

Q Yes.

A No.

Q Or welding?

A Welding, I hire welders every other week in the pipe crew. You want them?

Q Well, is that the work that Mr. DiSomma used to do?

A No.

Q Well, who is doing the work that Mr. DiSomma used to do?

A There isn't any.

Q Before he started working on the boggies he had welding to do, who is doing the welding?

A Can I explain to you?

Q I just asked you who is doing the welding, if anyone?

A Who did it before he came?

Q I would like an answer to my question, please?

A Who is doing what welding?

Q Is there any welding to be done in the place?

A Fabricating.

Q Welding?

A He was fabricating. We have --

JUDGE LIPTON: We'll be off the record in a moment.

(Discussion off the record.)

JUDGE LIPTON: On the record.

Q (By Mrs. Kave) Now, I'm asking you is it only work that Mr. DiSomma did on beggies for a year?

A No.

Q Well, what other work was he doing?

A Other work was he doing?

Q Yes.

A He was fabricating other stuff. He put a tank in on a boiler, he welded up some rings that we got a problem with, which came up after we started up the new machine.

Q And now, there is no welding work to be done at the

company?

A Fabricating work, no.

Q None of the type of work that Mr. DiSomma did is being done?

A Fabricating work, no.

Q How many employees are there now at Clearview?

A At Clearview itself, just Clearview?

Q Clearview and Grand Pre-Stredded?

A Around 67.

MRS. KAVE: All right.

I have no further questions at this time.

Wait I do have one more question I just thought of.

Q What type of work did you testify the men do on the July 4th Week-end?

A The work done on boggies.

Q They didn't work on anything else?

A Let me recall that.

Q You better think about it.

A I wasn't there. I told them what do do, to work on the boggies, we had to get them out.

Q You didn't tell them to work on a concrete mixer?

A A concrete mixer, let me think now. All of them. It couldn't have been all of them working on a concrete mixer.

Q How many of them came in on the July 4th Week-end to

begin with?

A I can't remember because I wasn't there.

Q But you're sure that woever came in only worked on boggies?

A Well --

Q That's what you testified to.

JUDGE LIPTON: What is your testimony?

THE WITNESS: That was the idea of them coming in because we were getting pushed for the 15th.

Q Do you know what they worked on that week-end?

A To be truthful right now, no, I don't recall.

MRS. KAVE: Okay.

JUDGE LIPTON: Mr. Donelan.

MR. DONELAN: I have no redirect, Your Honor.

JUDGE LIPTON: I have a question or two.

BY JUDGE LIPTON:

Q What was Mr. Comez getting paid in the latter part of July, do you know?

A Same rate as they were.

Q Same rate as Mr. DiSomma?

A That's right.

Q Same rate as Mr. Winfield?

A That's right.

Q Same rate as Mr. Nare?

A Yes.

Q And same rate as both Leonardi's?

A One Leonardi was a helper. He was at a higher rate, Peter. Peter Leonardi.

Q Was there any work done on the boggies after July 26th?

A Fabricating work, sir?

Q Any kind of work? Any kind of work?

A Well, if we got a flat we would work on it.

Q Your answer is yes?

A In that manner, yes.

Q Any kind of welding work?

A No welding work, sir.

Q Is it your testimony that all fabricating work was completed in July?

A Yes. We shipped the beams right after that.

Q Did you have work on boggies three or four years before 1973?

Let me put it this way --

A Yes. We had it, and then we let those guys go too after they fixed them up.

Q You testified that maintenance men were previously laid off?

A Yes.

Q Can you tell me when?

A Well, just prior, before George came in, we put on a new machine and we hired some welders, and they were there

for about two months and we let them go.

Q Were they maintenance men or welders?

A Welders.

Q Did you lay off any maintenance men like Mr. Bartoli?

A Yes.

Q When was that?

A Around the year before, six months before George got there, I would say.

Q Sox months before Bartoli was hired?

A That's right.

Q How long was he working for the company, two years?

A George, two and a half years, yes.

Q Six months before that, so three years before he was laid off you had laid off a maintenance men?

A Two men.

Q You had laid off two maintenance men?

A Yes.

Q Because work was slow?

A That's true, sir.

Q Do you recall their names?

A Dave Carpenter and Mr. Salanie was his name.

Q Any other occasions that you laid off maintenance men?

A Prior to that, a year before that was another man

we had and he went.

Q One man?

A Yes.

Q What was his name?

Was he a maintenance man?

A Yes.

Q Like Bartoli?

A Yes. I believe -- I know his first name was Ron. I don't recall his last name.

Q Any other occasions before that one man?

A Before Earl we had a maintenance man.

Q Before?

A Earl.

Q We won't go before Earl. He was there six years?

A Yes.

Q These are the only lay offs after Mr. Nare was hired six years before?

A In maintenance.

Q In the maintenance.

A There might have been one or two of others but I don't recall their names.

Q And is it your testimony that the wekding work now is done by laborers?

A Fabricating welding?

Q Any kind of welding?

A Well --

Q Fabricating welding is done by welders?

A We're not fabricating anymore.

Q You have no fabricating. What kind of welding work do you have now?

A We weld wire for the cages --

Q Who does that?

A The laborers always done that.

Q I understood your testimony to be that all the welding work you have now is being done by laborers?

A Which we always did before, yes, sir.

Q I'm not asking you what you always did before.

A Not fabricating welding.

Q You have no fabricating. You're going around in circles.

A Yes.

Q And Mr. Gomez?

A Is gone.

Q Why don't you wait until I ask a question.

A Yes.

Q He was hired as what?

A Well, actually the time he was hired he was hired as a laborer and then they told me that he could weld. So due to the fact that Sal got hurt for three months we were falling way behind on getting these boggies out. You

see I could have done --

Q Just a minute. There's a simple question.

Your testimony was he was hired to be switched over to laborers; is that your testimony?

A That's right.

Q Before he switched over to laborers what was he?

A He was helping out with the fabricating of the boggies.

Q Was he doing any welding on wiring?

A No. But he was doing laborers work at night, you know, cleaning up and stuff.

Q The answer is no, he was doing any work on wiring?

A I don't believe so. He might have did a day or so.

JUDGE LIPTON: Anything further of this witness?

MR. BONELAN: No, Your Honor.

MRS. KAVE: Yes.

RECROSS-EXAMINATION

BY MRS. KAVE:

Q Do you know if Mr. Carpenter and Mr. Salanie were members of Local 138 Welders?

A Maintenance.

Q They were not welders?

A 138 is not a welding union. It's an operating engineers union.

Q Do you know if they were members of the union?

A Yes, they were.

MRS. KAVE: I have no further questions.

JUDGE LIPTON: Anything further?

MR. DONELAN: No, Your Honor.

JUDGE LIPTON: Witness is excused.

Thank you.

(Witness excused.)

JUDGE LIPTON: We'll be off the record a moment.

(Discussion off the record.)

JUDGE LIPTON: Back on the record.

We'll be in luncheon recess until 2:15 p.m.

(Luncheon recess taken at 12:55 p.m.)

A F T E R N O O N S E S S I O N

JUDGE LIPTON: On the record.

Mrs. Kave, you have rebuttal?

MRS. KAVE: Yes. I would like to rebuttal to the stand Mr. Salvatore DiSomma, please.

JUDGE LIPTON: All right.

How many witnesses do you have on rebuttal?

MRS. KAVE: Four. But each one very short.

Whereupon,

SALVATORE DiSOMMA

was recalled as a witness, was reminded he was still under oath, was examined and testified as follows:

JUDGE LIPTON: All right.

Mr. DiSomma, you can sit down.

You're the same Mr. DiSomma who previously testified in this case?

THE WITNESS: Yes, sir.

JUDGE LIPTON: You are awre you're still under oath?

THE WITNESS: Yes, sir.

JUDGE LIPTON: All right.

REBUTTAL EXAMINATION

BY MRS. KAVE:

Q Mr. DiSomma, there was testimony that you did fabricating welding; is that correct?

A That's true.

Q Could you explain to me what fabricating welding is?

A Well, fabricating welding would be more or less -- well, we do boggies there. Now, in order to fabricate them, we had to make them wider so the beams would fit on them, different size beam than they were carrying.

In other words, we put heavy plates on them, if they wanted them four, five foot wider we would make them wider, according to the size he would give us. Anything that means a lot of welding that's fabricating, in other words, different sizes.

Q Is there any difference between plain, the plain word welding and fabricating welding?

A Well, fabricating welding is more or less almost production welding, quite a bit of welding. That's on fabricating.

Q When there's a large amount of welding to be done on one particular item that would be referred to as fabricating?

A You can call that fabricating, that is right. They would give you a blueprint, specifications, and you would make this fabricated unit the size they want.

Q Now, during your tenure or your time at Clearview, did you only work on fabricating welding with the boggies?

A No. I did mostly maintenance work.

Q Well, could you give me some examples of the type of work you did other than the work on boggies?

A Well, anything that was made out of steel through wear and tear that would crack my job was to repair it.

Q Is that anywhere in the plant?

A It could be any place in the plant from the highest point to the lowest point.

Q Did they have a lot of things made of steel in the plant?

A Well, almost everything was made out of steel.

Q Now, could the laborers who did welding do this type of welding?

A I don't think so because most of your laborers were what's known as wire welders. All they would know how to do is tank welding, T-A-N-K .

Q Now, that term is very technical, and I'm not that familiar with welding.

What is tank welding?

A Tank welding is where you make a wire cage --

MR. DONELAN: I'm going to interject a belated objection. I believe I thought I heard the witness' previous the statement I think this is what laborers couldn't do.

JUDGE LIPTON: I'll take it. He is describing tank welding.

Go ahead.

A Tank welding is, in the case of Clearview, tank welders would form a cage, could be round, could be square, and these wires were tanked in order to make a form inside so the concrete would hold.

It's a sort of a cage, and they poured concrete into these forms.

Q Is tank welding always attaching wires together?

A No. It could be anything else with small tanks. The most a tank would be is maybe a half an inch long that would be tank welding or spot welding, small tanks. Has nothing to do with production welding.

Q Now, at the time when you were laid off from Clearview, wereyou only doing work on boggies?

A No. I was doing general maintenance welding, and I had a job on, known as rings. These rings are used on forms to have the pipes of a certain measurement and size.

Now, the leg is on these forms have been broken off or worn down. So my job was to put new legs on these and it required heavy welding. Which would not be classed as type welding.

Q Well, were you in the middle of this job at the time you were discharged?

A At the time I was discharged I imagine or I know there was at least another 25, 30 rings to do.

Q Which is how much work, how long would that take you to do?

A At least a month of my work.

Q Now, did you ever work with Mr. Gomez?

A Yes.

Q How many hours a day did you work with Mr. Gomez?

A With Mr. Gomez, when we were working on boggies I work anywhere from six to seven hours with him.

Q Which is practically the entire day?

A That's right.

Q What kind of work was Mr. Gomez doing?

A He was doing tank welding when we started. And he was doing heavy welding but only through my tutoring.

Q You were teaching Mr. Gomez?

A I was teaching Mr. Gomez how to do heavy welding.

MRS. KAVE: I have no further questions of Mr. DiSomma.

CROSS-EXAMINATION

BY MR. DONELAN:

Q Mr. DiSomma, you've indicated or explained to the Court your distinction between tank welding and what you call production welding.

Did you at any time see any of the laborers performing maintenance welding in the plant?

A Maintenance welding?

Q Yes.

A Yes. We had a couple of welders thatdid some maintenance work. But I wouldn't class it as first class welding.

Q So to the best of your knowledge laborers were performing maintenance welding in the plant?

A Yes.

Q You've indicated, Mr. DiSomma, at the time of your lay off that you were, I believe, putting legs on rings, is that what you testified?

A That's correct.

Q Were you doing any work at the boggies at the time at the time you were laid off?

A The boggies were only coming in in the afternoon for little odds and ends, minor repairs, but there were still some welding on it.

Q Were you still working on the boggies at the time?

A Once in a while we work on boggies, they eyes come off or the ring come off, the eye where you tie the ropes or cables.

Q Do you know who Mr. Jim Shelton is?

A I'm sorry, I don't know. I might know him by sight but I don't know him.

Q Do you have a recollection of a maintenance welder who was performing the work of welding on the pipe machines

at the time of your discharge?

A Jim?

Q Jim shelton?

A I can't remember.

Q You indicated, Mr. DiSomma, that you had worked with Mr. Gomez on the boggies for a considerable period of time every day. I believe you also said that you were teaching Mr. Gomez welding?

A That's correct.

Q Did anybody on behalf of Clearview or Grand ask you to teach Mr. Gomez how to weld?

A Well, not indirectly, but George told me to break him in to heavy welding because he wasn't a good welder. I would class him as a third class welder.

Q Goerge who?

A Bartoli.

Q Did Mr. Francis ever tell you --

A Mr. Francis told me to see if I could break him in because Gomez couldn't speak English and by sign language and telling him what I wanted he startedto understand me and was a better welder after three, four weeks of welding.

Q When did Mr. Francis tell you to break him in?

A When he was first hired, Mr. Gomez was first hired.

MR. DONELAN: I have no other questions.

MRS. KAVE: No further questions.

BY JUDGE LIPTON:

Q You observed laborers, a couple of laborers doing maintenance welding?

A Yes, sir.

Q The question is, when did you see these laborers do the welding?

A There was a laborer by the name of Whity, we called him Whity. He did some plant maintenance but when it came to first class welding he couldn't do first class welding.

Q Just try to answer my question.

When was this you saw Whity or anybody else who was a laborer do plant maintenance welding?

Was it in July?

A It was in -- Well, every since I came there.

Q All the time?

A All the time I started. He would do maybe one or two welding jobs a week.

Q Now, how long would those jobs take?

A Well, some of them could take two or three hours. Some of them a few minutes. It's according to the operation.

Q What was the longest that they would take?

A I seen them work on a job, it took two days.

Q When these laborers would do welding do they work together with the regular maintenance crew?

A No. He worked by himself.

Q Was there a different location that the laborers worked in the plant?

A Well, he did work in our shop.

Q He'd come in to your shop?

A He would come in to our shop, work on our bench and maybe use one of our welders.

Q Use your welding equipment?

A Yes.

Q Is there anybody else you can think of other than Whity?

A That's the only one I know of that could have done that type of welding.

Q Your testimony is that there's only one you knew of?

A The only one I know of that did that type of welding.

Q About how much time would you say he spent in the shop welding equipment in the course of a week?

A In the course of a week, oh, maybe he averaged about four, five hours a week.

Q Was there welding equipment outside of the shop that the laborers could use?

A Yes.

Q Heavy welding equipment?

A No. It was more or les -- well yes, it's heavy welding equipment but it was used strictly for tank welding.

Q Just for tank welding or spot welding?

A No maintenance repairs,

Q This tank welding is that the same as spot welding?

A Spot welding.

Q Was that acetylene?

A No. It's a hilliarc or regular arc welding.

Q And the heavy welding is acetylene welding?

A No. Heavy welding is arc welding, that's arc welding.

Q Let's back up a little bit.

Tank welding or spot welding --

A You can adjust your machine to do spot welding.

Q Does that acetylene welding used acetylene torch?

A We have no acetylene in the place.

Q Both the heavy and the tank?

A The heavy and tank was done mostly by arc welding.

Q Arc welding?

A Different.

Q Different kinds of equipment or the same equipment?

A About the same equipment.

JUDGE LIPTON: Anything further of this witness?

MR. DONELAN: I just have on other question.

BY MR. DONELAN:

Q You indicated this gentleman Whity had been working on this particular type of work?

A Yes.

Q Was Whity in the employ of Clearview or Grand before you came to work there?

A That I don't know. I never asked him any questions. I never seen his paycheck.

Q Did he come subsequent to your being hired or was he there--

A He was there quite a while before I came.

MR. DONELAN: Thank you.

I have no other questions.

JUDGE LIPTON: All right.

Witness excused. Thank you.

(Witness excused.)

MRS. KAVE: I call to the stand Mr. Louis Leonardi.

Whereupon,

LOUIS LEONARDI

was recalled as a witness, was reminded he was still under oath, was examined and testified as follows:

JUDGE LIPTON: Please be seated, Mr. Leonardi. Your the same Louis Leonardi who previously testified in in this case?

THE WITNESS: Yes.

JUDGE LIPTON: You know you're still under oath.

THE WITNESS: Yes, sir.

JUDGE LIPTON: All right, Mrs. Kave.

DIRECT EXAMINATION

BY MRS. KAVE:

Q Mr. Leonardi, there was testimony by Mr. Francis that your work assignments were placed on the blackboard; is that correct?

A Yes.

Q Were new assignments placed on the blackboard daily?

A Yes.

Q Can you approximate how many assignments you have in one evening?

A Sometimes ten, sometimes fifteen, some of the assignments were there for a couple ofmonths.

Q When you say that an assignment would be there for a couple of months, does that mean that one job would take a couple of months to do?

A Sometimes we were waiting for parts or it didn't have priority over the other things.

Q Now, did you always complete the assignments on the blackboard for a particular day?

A I don't think I ever did.

Q So there was always some work that was left over?

A Yes.

Q This is for the entire time that you worked for the company?

A For the entire time that they had the blackboard.

Q How long did they have the blackboard?
A Oh, I would say about seven or eight months.
Q Did Mr. Francis ever speak to you about the fact that you didn't complete all the jobs on the blackboard?
A Yes.
Q How often?
A Maybe onece every two weeks or so.
Q Now, did he speak to you about not completing the jobs on the blackboard prior to July 26th?
A Yes.
Q And did he speak to you about after July 26th?
A Yes.
Q Was there any difference in the amount of work that you did after July 26th?
A I would say there was more after July 26th.
Q More complaints
A No, more work.
JUDGE LIPTON: Were there more complaints?
THE WITNESS: Oh, more complaints, no, I would say it was about the same.
Q Now, I don't exactly understand what you mean by more work.
Do you mean more work on the blackboard or more work being done?
A There was more work that wasn't -- well, can I

explain it. If I would go in one day and there was a list of 17 or 18 things to do, I could only complete so many in eight hours, and it sort of built up like the unfinished work I couldn't get to.

Q There was more of a back log of work?

A Yes.

Q Because there were so many more jobs to be done?

A Right.

Q Did you in fact slow down on the job after July 26th?

A I put in much -- I would say much more time. I was more conscientious.

Q Did your brother Peter always complete all his assignments on the blackboard?

A No.

Q Is it the same as you that he would regularly not complete all the assignments on the blackboard?

A Yes.

MRS. KAVE: I have no further questions.

MR. DONELAN: Just one moment, please.

CROSS EXAMINATION

BY MR. DONELAN:

Q Mr. Leonardi, am I correct from your testimony that there were more uncrossed off or uncompleted items on this blackboard after July 26th?

A Yes.

Q And you attribute it to an increase in work?

A I don't know what to attribute it to, it just never got done.

MR. DONELAN: no other questions.

JUDGE LIPTON: The witness is excused.

Thank you.

(Witness excused.)

MR. KAVE: Mr. Bartoli, please.

Whereupon,

GEORGE BARTOLI

was recalled as a witness, was examined and testified as follows:

JUDGE LIPTON: Please be seated Mr. Bartoli.

You're the same George Bartoli who previously testified in this proceeding?

THE WITNESS: Yes.

JUDGE LIPTON: You're aware you're still under oath?

THE WITNESS: Yes.

JUDGE LIPTON: Please be seated.

DIRECT EXAMINATION

BY MRS. KAVE:

Q Mr. Bartoli, did you regularly work a number of hours of overtime at Clearview?

A Yes.

Q How many hours overtime did you work a week?

A Approximately 13 hours a week.

Q Was that -- did you also work 13 hours a week overtime prior to the spring of 1973?

A Yes.

Q Did you work on July 4th, 1973?

A Yes.

Q Who worked with you on July 4th, 1973?

A If I remember right there was four of us, Louis Leonardi, Pete, and Sal.

Q And how come you came to work on July 4th, did someone ask you to work?

A Yes. Dave Francis.

Q And what type of work did you do?

A Repair a concrete mixer.

Q Is that what you did the entire day?

A Two days.

Q Did Mr. Francis ask you to repair the concrete mixer?

A Yes, ma'am.

Q Did you do any work on boggies?

A No. That was number one priority.

Q Excuse me?

A The mixer.

Q Why was it number one priority?

A Because that all to do with the production.

Q Did Mr. Monahan ever, after July 26th, did Mr. Monahan ever speak to you about your work, criticizing you?

A No.

Q Did Mr. Francis?

A No.

Q Were you ever told by Mr. Francis that you had to take orders from Mr. Monahan?

A No.

Q He told me he's my boss.

Q Excuse me, who told you that?

A Dave Francis. He gives me my orders.

MRS. KAVE: I have no further questions.

MR. DONELAN: Just one minute. No questions.

JUDGE LIPTON: Witness is excused. Thank you.

(Witness excused.)

MRS. KAVE: Mr. Earl Nare.

Whereupon,

EARL NARE

was recalled as a witness, was reminded he was still under oath, was examined and testified as follows:

JUDGE LIPTON: You're the same Earl Nare who previously testified in this proceeding?

THE WITNESS: Yes.

JUDGE LIPTON: You're aware you're still under oath?

THE WITNESS: Yes.

DIRECT EXAMINATION

BY MRS. KAVE:

Q Mr. Nare, when did you stop working overtime for the company?

A I don't think there was ever a period when I stopped working overtime.

Q Were you working overtime last summer at the time you were laid off?

A Yes, emergencies that's the only time I get.

Q So before -- you never worked regularly overtime?

A Not regularly, no.

Q Only in emergencies?

A Maybe years ago I used to come in on Saturday.

Q Well, can you remember when you stopped coming in on Saturdays?

A About four years ago.

Q Right before you were discharged between July 26th and August 8th, did at any time can you recall Mr. Francis telling you you better hustle or hurry up on the job?

A Not to my knowledge.

Q Do you recall receiving any complaints about not finishing a job on a number 400 machine?

A I don't know. It was a common complaint all the time there wasn't enough work being turned out.

JUDGE LIPTON: What's the answer.

Q Will you speak up please because I can't even hear you?

A It wasn't enough being produced by the maintenance department.

Q Who used to complain like that?

A Mostly Dave Francis.

Q Well, did he complain regularly that there wasn't enough work being put out?

A Yes.

Q All right.

Did he complain regularly before July 26th?

A Yes.

Q Has he been complaining ever since you started working there?

A Yes.

Q Do you recall any particular instrument -- excuse me -- incident with a number 120 machine right before you were fired?

A No, I don't.

Q You don't recall receiving any complaints about not working on a number 120 machine?

A No.

Q Do you recall Mr. Dave Carpenter and Mr. Salanie, the two former maintenance employees?

A Yes. They were 138 welders.

Q Do you know if 138 welders get paid more than non-union welders?

A Yes.

Q Do you know how much they were paid?

A I don't know at the time. Eight, nine dollars, ten, twelve dollars now.

JUDGE LIPTON: They were not members of the laborers union but the operating engineers union?

THE WITNESS: Yes.

Q Do you know why they were laid off?

A Some kind of a route. One thing I think too much money involved.

MRS. KAVE: I have no further questions at this time.

CROSS EXAMINATION

BY MR. DONELAN:

Q Mr. Nare, at the time you came to work for Clearview were you the sole maintenance man?

A Yes.

Q And was there any welding being done at that time when you first came to work for Clearview?

A Yes.

Q And were you doing the welding?

A No.

Q Who was doing the welding, do you know?

A When I first came, they had 138 welders. Ronny they called him. I don't remember his last name.

Q Do you recognize this name Jim Shelton?

A Yes. He runs the McCarcken a pipe machine.

Q Is he a laborer?

A Yes.

Q Do you know if Mr. Shelton was doing any welding when you came to work for Clearview?

A On his own machine once in a while, he would maintain his own machine.

Q Did you ever see him doing any other welding work?

A I think he was making forms or something for the trucks to carry. Twelve foot pipe or something.

Q You were the only maintenance man at that time; is that correct?

A Once in a while I would have helpers, I mean for a couple of months at the time.

Q But generally speaking you were the only maintenance man at the time?

A Yes.

Q And your only job was a maintenance man?

A No.

MRS. KAVE: I object. What time is Mr. Donelan referring to?

JUDGE LIPTON: This is the first year of your employment?

THE WITNESS: Right.

Q Did that same condition continue in your second year of employment, Mr. Nare?

A Yes. They had 138 welders there.

Q My question is was Mr. Shelton doing welding work during your second year of employment?

A The only welding I seen him do was around how own machine.

Q Do you know who Mr. Whity Nixon is?

A Yes.

Q Is Mr. Nixon a laborer?

A Yes.

Q Did you ever see Mr. Nixon performing welding work?

A Yes.

Q Did he perform welding work during the first year you worked at Clearview?

A I don't know too much about the first year, but he weld off and on.

Q You saw him doing welding work?

A Yes.

Q Was Mr. Nixon employed by Clearview prior to your coming there?

A Yes.

Q Was Mr. Shelton also a previous employee?

A Yes.

Q And now, during your second year that you were there,

Mr. Nare, did you see Mr. Nixon doing welding work during that year?

A Once in a while.

Q You weren't doing any welding work during that period of time, were you?

A Once in a while, a little bit of tanking here and there.

Q What about your third year, was Mr. Nixon doing welding work during that period of time also?

A There was a little rouse about Maintenance welding, they had 138 welders there.

Q My question is, was Mr. Nixon doing welding work during let's say the third year you worked for Clearview?

A He might have done a little, yes.

Q Do you recognize the name Raoul?

A No, I don't.

Q Now, Mr. Nare, was Mr. Nixon also a laborer to the best of your knowledge?

A Yes.

MR. DONELAN: I have no other questions.

REDIRECT EXAMINATION

BY MRS. KAVE:

Q Mr. Nare, about how many machines does Clearview Concrete and Grand Pre-Stressed have to maintain?

A I don't know. About 15 or 20 fork lifts.

Q Are fork lifts the only machines?

What about trucks?

A They have straddle lifts, $90,000 piece of machines and I think there's nine trucks.

Q And basically your job --

A Trailers by the dozen.

JUDGE LIPTON: What is that?

THE WITNESS: Truck trailers by the dozen.

Q Anything else?

A Yes. We did general plant maintenance throughout the plant, fixing the pipe machines, retooling, change over. They had the night crew doing that as much as they did anything.

MRS. KAVE: No further questions.

MR. DONELAN: Your Honor, I just have one more.

JUDGE LIPTON: Go ahead.

RECROSS EXAMINATION

BY MR. DONELAN:

Q Do you know the name of a gentleman who was doing welding at the Grand Pre-Stressed during the period of time that you were working at Clearview?

A The gentleman that was doing --

Q Welding for Grand Pre-Stressed?

A I don't know. They've got a couple of welders over there welding cages together.

Q Who were those gentlemen?

Do you know who they are?

A I can't think of them directly.

Q The name Raoul doesn't ring a bell, does it?

A It could be, I mean --

JUDGE LIPTON: Do you remember anybody by the name of Raoul?

THE WITNESS: No, I don't.

JUDGE LIPTON: No.

MR. DONELAN: No further questions.

BY JUDGE LIPTON:

Q Now, all of this equipment that you diescribed, the fork lifts, and the trailers, and is that the straddle lifts or the traddle lifts?

A Straddle lifts.

Q And the nine trucks?

A Yes.

Q Who did the engine maintenance on those vehicles?

A We did.

Q You did all of the maintenance on the vehicles?

A Yes.

Q Did that also include lubrication?

A Yes.

Q Cleaning?

A Yes.

Q Tires?

A Yes.

Q Everything that a garage would do?

A Yes.

JUDGE LIPTON: Anything further of this witness?

MR. DONELAN: Yes. One further question.

BY MR. DONELAN:

Q You indicated that the engine maintenance on the trucks was done by the maintenance crew; is that correct?

A Not if it was a complete overhaul, they send them out and have them rebuilt.

Q Do you have a recollection of trucks being sent out on a regular basis to White Company for the maintenance work?

A When they were new, yes, they went out for work that was warranty work.

Q At the time of your discharge or just prior to the time of your discharge do you have any recollection of the trucks being sent to White for maintenance work at that time?

A No. I think we were doing most of it.

MR. DONELAN: Nothing further, thank you.

MRS. KAVE: No further questions.

JUDGE LIPTON: Witness is excused. Thank you.

(Witness excused.)

JUDGE LIPTON: General Counsel finally rests?

MRS. KAVE: Yes, Your Honor.

JUDGE LIPTON: I fix the date for filing briefs, I don't request oral argument, but --

MRS. KAVE: I will waive oral argument.

MR. DONELAN: Yes, Your Honor.

JUDGE LIPTON: I fix for filing briefs is April 5th, is on a Friday.

There are only two exhibits in evidence, General C Counsel 1 and General 2.

MRS. KAVE: That's correct, Your Honor.

JUDGE LIPTON: All right.

There being nothing further, in due time my decision in this proceeding will be issued and served upon each of the parties.

You are reminded to refer to the Statement of Standard Procedures at formal hearings before the Board with respect to proposed findings for my consideration, and also with respect to the filing of briefs before the Board after the issuance of my decision.

There being nothing further the hearing is now closed.

District No. 15
International Association of Machinists
and Aerospace Workers
Affiliated with the
A.F.L.-C.I.O.
7 EAST 15TH STREET
NEW YORK, N. Y., 10003
TELEPHONE: ALGONQUIN 5-6303

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CERTIFIED RRR

July 20, 1973

Clearview Concrete Pipe Corp.
60 East Industry Court
Deer Park, New York 11729

Gentlemen:

This is to advise you that District 15 of the International Association of Machinists and Aerospace Workers, AFL-CIO, represents a majority of your employees in a bargaining unit consisting of all mechanics, helpers, welders, maintenance and all service department employees, excluding office clerical and professional employees, watchmen, guards and all supervisors as defined in the National Labor Relations Act as amended. You are to consider this a continuing request for recognition as collective bargaining representative for employees included in the unit described.

You are further advised that we are prepared to furnish proof to you that we actually do, in fact, represent a majority of the employees referred to above. In view of this we are herewith requesting recognition and collective bargaining rights on behalf of the employees as the sole and exclusive collective bargaining agency in all matters pertaining to wages, rates of pay, hours of work and all other conditions of employment.

The Union is prepared to meet with you at your convenience to discuss these matters and to negotiate a collective bargaining agreement. You may contact the writer at the address listed above or by telephoning 255-6303.

We would appreciate your early reply to this communication.

Very truly yours,

Joseph Solar
BUSINESS MANAGER

JS/m

GENERAL COUNSEL'S EX. #2.
2-20-74